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A-529

Administrative Appeal

No.

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- 20) Letter to Robert Harris from Greg Ossont, February 22, 2007 (Petitioner's Exhibit #1)
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- 22) Multi-Family Rental Facility License Application, dated November 6, 2006, signed by Robert Copeland (Petitioner's Exhibit #3)
- 23) Site Development Approval for S-236, KRA-BARR Apartments, October 12, 1970 (Petitioner's Exhibit #4)
- 24) Approved Site Plan S-236, reduced copy (Petitioner's Exhibit #5)
- 25) Summary of Expert Testimony and Credentials (Petitioner's Exhibit #6)
- 26) Pre-Hearing Submission of Respondent – The City of Gaithersburg
- 27) Approved Site Plan S-236 (Respondent's Exhibit A)
- 28) E-mail from Sara McLaughlin, RST, indicating date of final vacancy, July 6, 2006 (Respondent's Exhibit B)
- 29) Ordinance No. 0-2-65, including parking requirements applicable when site plan S-236 (Respondent's Exhibit C)
- 30) Ordinance No. 0-13-80, amending parking requirements (Respondent's Exhibit D)
- 31) Current parking requirements, Section 24-219, City of Gaithersburg Zoning Ordinance (Respondent's Exhibit E)
- 32) Resume for Stanley D. Abrams (Respondent's Exhibit F)

City of Gaithersburg • 31 South Summit Avenue • Gaithersburg, Maryland 20877 • Telephone: (301) 258-6330 • Fax: (301) 258-6336
plancode@gaithersburgmd.gov • www.gaithersburgmd.gov

BOARD OF APPEALS

**ADMINISTRATIVE REVIEW
APPLICATION**

In accordance with Chapter 24, Article VII, Section 24-187 thru 190 of the City Code

Application No. A-529
Date Filed 3/2/07
BOA Hearing 4/12/07
Decision _____
Date of Decision _____
Opinion Rendered _____

SUBJECT PROPERTY West Deer Park Apartments

ADDRESS 70 West Deer Park Road ZONING CLASSIFICATION R-20

LOT Parcel A BLOCK _____ SUBDIVISION KRA-GARR Gardens

APPLICANT WDP-RST LLP TELEPHONE (301) 816-4242

ADDRESS 6001 Montrose Road, Suite 701, Rockville, MD 20852

If there are co-applicants, provide additional sheet(s) with names, addresses and phone numbers.

NATURE OF APPLICATION

Briefly describe application request **referencing appropriate section of City Code.**

Appeal of determination by the City of Gaithersburg's Planning and Administration
Department requiring site plan approval and renewal of a license to rent pursuant to
Sections 24-17, through 24-20, 24-56, 24-168, 24-218, 18AA-5 and 18AA-6.

List case numbers of all applications filed within the past three (3) years pertaining to any portion of subject property.

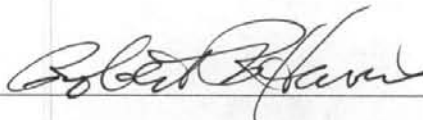
A-528; A-526; SP-05-0010

SUBMISSION REQUIREMENTS

1. **A written statement** explaining the grievance to the Board of Appeals and outlining the history of both applicant's and City's actions in regards to the subject property.
2. **Supporting documentation**, see list on reverse side.
3. **Fees**, see separate schedule.
4. **Transcript costs** (to be charged after completion).

I have read and complied with the submission requirements and affirm that all statements contained herein are true and correct.

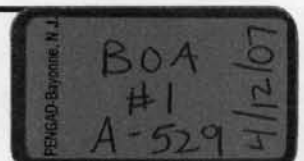
Signature



Date

3/2/07

If there are co-applicants, attach additional signature page(s) with signatures and printed names and addresses.



SUBMISSION CHECKLIST

In accordance with Chapter 24, Article VII, Section 24-188(3) of the City Code

1. ☐ **Written statement explaining grievance** and outlining histories of both petitioner's and City's action in regards to subject parcel. This statement should demonstrate why, in the petitioner's opinion, the Planning Commission and/or Staff decision in question was in error.
2. ☐ **The action, document, and all records** upon which the appeal is filed or based. (Files of a Planning Commission action shall be submitted by Planning Commission Staff following the filing of an Administrative Review.)
3. ☐ **Copy of official zoning vicinity map** with a one-thousand-foot radius (circle) surrounding the subject property and other information to indicate the general conditions of use and existing improvements on adjoining and confronting properties. (Zoning maps available from the Planning and Code Administration.)
4. ☐ **List of names and addresses of adjoining and confronting property owners or occupants** within two hundred (200) feet of the subject property; if such property is a condominium, cooperative or is owned by a homeowners' association the petitioner must provide their correct address and that of their resident agent. (Information can be researched in the Planning and Code Administration.)
5. ☐ **A list of names and addresses of persons whom you wish to be notified of the public hearing**, other than adjacent property owners.
6. ☐ **Required fee.** (Check where applicable. See fee schedule.)
 - ☐ Planning Commission Decision
 - ☐ Staff Decision
7. ☐ **Cost of transcripts.** (Transcript costs are billed in accordance with fee schedule.)

CRITERIA

In accordance with Chapter 24, Article VII, Section 24-189(a) of the City Code

The Board of Appeals may grant a petition for Administrative Review when findings from the evidence of record that final order, requirement, decision or determination which is the subject of the appeal was clearly erroneous or not in accordance with the law.

Please note: Section 24-188(f) of the City Code stipulates that appeals alleging error by the Planning Commission shall be by oral argument or written statement based **solely** on evidence submitted and received in the Planning Commission proceedings.

MISCELLANEOUS PAYMENT RECPT#: 37596
CITY OF GAITHERSBURG
31 SOUTH SUMMIT AVE.
GAITHERSBURG MD 20877-2098

DATE: 03/05/07 TIME: 10:42
CLERK: pwoodruf 1
CUSTOMER#:

37596

PARCEL:

CHG: MISC OTHER MISCELLAN 1000.00

REVENUE:

1 100 441300 1000.00

ZONING/SUBDIVISION FEES

REF1: W. DEER PK REF2:

CASH:

001 101000 CASH-BANK OF

1000.00 PAID AMT

100 PAID BY NAME
RST III LLC PAY METHOD
2161 CHECK

AMT TENDERED:

AMT APPLIED: 1000.00

CHANGE: 1000.00



Gaithersburg

A CHARACTER COUNTS! CITY

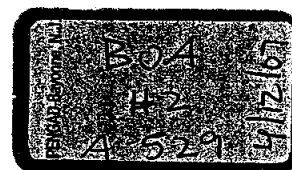
CITY OF GAITHERSBURG

31 SOUTH SUMMIT AVENUE, GAITHERSBURG, MARYLAND 20877
301-258-6330

RECEIPT

FROM	<u>RST III LLC</u>
NAME	
ADDRESS	
FOR	<u>B.O.A.</u>
	<u>West Bank Bank</u>
	<u>Acct # 4478-940</u>
	<u>941300</u>
	TOTAL AMOUNT
	\$ <u>941300</u>
DATE	<u>3-2-07</u>
BY	<u>CH E 3101</u>

09/04



March 2, 2007

Robert R. Harris
301 215 6607
robert.harris@hklaw.com

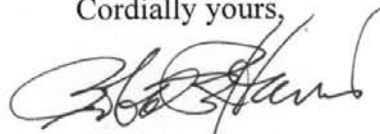
Ms. Caroline H. Seiden
Planner, City of Gaithersburg
31 South Summit Ave
Gaithersburg, MD 20877

Re: RST Development, LLC (Administrative Review Application No. A-_____)

Dear Ms. Seiden:

On behalf of RST Development, LLC we are filing an Administrative Review Application concerning the City's February 22, 2007 decision of Planning and Code Administration Director Greg Ossant. As indicated in the body of that appeal, we are asking that this action be consolidated with an earlier, pending appeal (A-528) filed on February 14, 2007. That earlier appeal is scheduled to be heard by the Board of Appeals on April 12, 2007. Both appeals concern the same property and overlap substantially with respect to issues before the Board of Appeals and arguments to be presented. It would be most efficient for all parties involved for the actions to be heard simultaneously. Please let us know at your earliest convenience if this request will be granted.

Cordially yours,

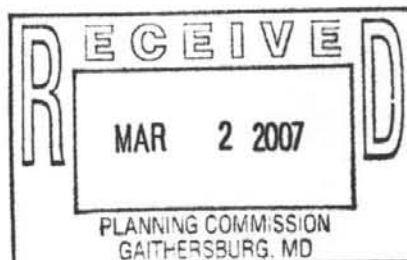


Robert R. Harris

Enclosure

cc: Scott Copeland
Steve Bogorad

4397159_v1



**BEFORE THE BOARD OF APPEALS
FOR THE CITY OF GAITHERSBURG, MARYLAND
APPEAL CHARGING ERROR IN
ADMINISTRATIVE ACTION OR DETERMINATION**

COMES NOW, WDP-RST LLC ("RST"), by its attorneys, and submits the following appeal of the February 22, 2007 decision of Planning and Code Administration Director Greg Ossant of the City of Gaithersburg (the "City") to (1) require site plan approval prior to RST's reoccupation of RST's multifamily apartment project and (2) refuse to issue a renewal of RST's Rental Housing License for the same multifamily apartment project.

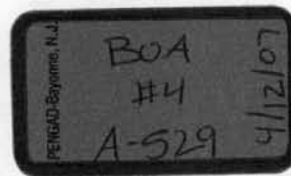
RST requests this appeal be consolidated with RST's pending appeal filed on February 14, 2007 seeking to overrule the decision of the City that RST is not entitled to the issuance of a rental housing license. See Exh. 1. RST requests that a hearing on both appeals be conducted during the April 12, 2007 Board of Appeals hearing, which is the date on which the pending appeal has been set.

STATEMENT OF THE CASE

RST is the owner of certain land and improvements located at 70 West Deer Park Road, Gaithersburg, Maryland and known as West Deer Park Apartments (the "Apartment Project"). The Apartment Project is classified in the R-20 zone (medium density residential) and is developed with multi-family residential buildings that contain 198 dwelling units. These units have been operated as rental apartments since their construction in 1973.

RST purchased the Apartment Project in 2005 and obtained Site Development Approval from the Planning Commission for the redevelopment of the Apartment Project with 130 townhouse units on January 4, 2006. The tenants of the Apartment Project were relocated to facilitate the redevelopment of Apartment Project for townhouses. However, significant declines in the residential housing market and increases in the costs of construction have adversely impacted such proposed redevelopment and therefore RST decided not to proceed with the redevelopment. Instead, RST decided to renovate the existing structures and to continue to operate the Apartment Project as rental apartments in accordance with an existing use and occupancy permit and a then existing rental license. The renovation work RST plans to perform includes the installation of new cabinets, carpeting and other improvements, but does not involve any structural modifications, changes in the overall number of dwelling units, or increases in the exterior dimensions of, or usable space within, the existing buildings.

RST discussed its proposed renovations of the Apartment Project with City Staff, and City Staff initially agreed with RST that RST would not be required to obtain any approvals from the City to renovate the Apartment Project and continue its operation and occupation as rental apartments. RST made preliminary arrangements to commence the planned renovation of the Apartment Project, but before RST could commence the work, City Staff advised RST that the City *might* take the position some sort of City approval would be required before RST could reoccupy the Apartment Project with tenants. Subsequently, in a meeting that included outside



counsel to the City and counsel to RST, outside counsel to the City expressed his belief that RST would need to obtain approval of a site development plan amendment before the Apartment Project could be reoccupied. The City's counsel stated that the basis for this belief was his view that the existing Apartment Project constituted a non-conforming use by virtue of the fact that the number of parking spaces for tenants was slightly less than the number of spaces that would be required under the current City Zoning Code if the existing structures were built today.

On February 22, 2007, the City informed RST via letter that site plan approval was needed prior to reoccupation of the existing dwellings at West Deer Park Apartments. The letter states in relevant part:

The multi-family use of the property has been vacant and discontinued for more than ninety (90) days. In accordance with the City of Gaithersburg Zoning Ordinance, depending upon what your client proposes for the project, your client will be required to file either an amendment to the current multi-family use site plan or an entirely new site plan. In either case, the site plan application should include those items listed in Section 24-169 of the Zoning Ordinance. A checklist of required items is included herein for reference. I refer you generally to Sections 24-17, 24-169, 24-170, 24-171 and 24-172 of the Zoning Ordinance. Also depending on what your client proposes, an application for a parking waiver might be necessary.

See Exh. 2.

The Rental Housing License for the Apartment Project, which was issued to the prior owner of the Apartment Project and in force when RST acquired the property, was set to expire on January 31, 2007. See Exh. 3. RST filed the appropriate papers, along with a check in the amount of \$19,800, to obtain issuance of a new Rental Housing License. See Exh. 4. The City never returned the \$19,800 check RST sent in connection with the renewal license.

On Monday, January 29, 2007, Kevin Roman, a City employee, informed RST that the City would not renew RST's license to rent the apartments at the Apartment Project because the City no longer recognized the Apartment Project as property that can be utilized as an apartment complex. Mr. Roman did not provide any other reason for the City's refusal to issue the Rental Housing License, and he stated that any questions RST had with respect to the City's position should be directed to the Planning and Code Administration Director Greg Ossant. Despite subsequent attempts for further explanation regarding the City's decision not to renew RST's license, the City did not confirm its position in writing. Out of an abundance of caution, on February 14 2007, RST treated the January 29, 2007 phone call from Kevin Roman as a final decision, and submitted its appeal of the City's decision not to issue the Rental Housing License. The appeal is currently pending and is set to be heard by the Board of Appeals on Thursday, April 12, 2007.

Subsequently, on February 22, 2007, within the same letter setting forth the City's decision that site plan approval would be required, the City articulated its reasoning in writing for not renewing RST's Rental Housing License. The letter stated in relevant part:

Please note that the City received your client's application for a renewal of its rental housing license within the time frame provided in Sec. 18AA-6 of the City Code. In accordance with the provisions of Secs. 18AA-5 and 6, the City subsequently conducted an inspection of the property. Violations of the Code were found; the property was found to be vacant, boarded up, and without utility service. Because an appeal related to the property was pending before the Board of Appeals, the City was not able to determine when the violations could be addressed. Therefore, the renewal was not issued at the time.

See Exh. 2. Despite RST's appropriate filing of its housing rental renewal notice, RST was never provided written notice of a violation preventing its license renewal, as required under the Code. Moreover, the property is vacant because the City will not allow re-occupancy. It is boarded up as required by the City to prevent vandalism, and, contrary to the representation in the letter, the property does have utility service. RST has yet to be informed of what precise violation is to be cured and a time period in which the cure is to occur.

DISCUSSION AND ARGUMENTS

Based on various provisions of Chapter 24 and Chapter 18AA of the City of Gaithersburg Municipal Code (the "Code"), the City clearly erred in reaching its decision, that RST is required to get site plan approval prior to reoccupation of the Apartment Project and that RST is not entitled to renewal of its Rental Housing License.

Site Plan Approval

The Apartment Project is a permissible use that does not require site plan approval. Pursuant to Section 24-168, no site development plan is required to be submitted or approved if the "proposed use is a permitted use in the zone and is substantially similar to the use to which the premises were put by the last prior occupant thereof, and the property on which the use is proposed to be located has been the subject of a site development plan approved by the planning commission." See Exh. 5. The Apartment Project is a permissible use because it is multi-family residential housing, which is a permitted use within a R-20 zone. A site plan was approved for the property. RST's proposed use for the property is the same as the prior approved use – multi-family residential housing. Accordingly, no site plan approval is necessary for RST to pursue renovations on the Apartment Project.

The only argument advanced by the City as to why RST's use is a non-conforming use, requiring site plan approval, is that the number of parking spaces located at the Apartment Project is less than the number that would be required if the Apartment Project were built today. However, such position is similarly flawed for two reasons. First, the specific number of parking

spaces is not a "use" for the property. Section 24-1 of the City Zoning Code defines "use" as the "principal purpose for which a lot or main building thereon is designed, arranged or intended and for which it is or may be used, occupied or maintained." In this case, the "use" of the Apartment Project, *i.e.*, its primary purpose, is multi-family residential. Multi-family residential uses and accessory uses, such as off-street parking, are permitted as a matter of right. Rental apartment uses have always been permitted on the property under the standards of the R-20 zone, and the continuation of such uses would likewise be permitted under the Zoning Ordinance. See Exh. 5. Second, pursuant to Section 24-218(a), the number of parking spaces required for a multi-family housing project is determined at the time the residential buildings are erected, enlarged or structurally modified. See Exh. 5. There is no requirement that an owner of property constructed in accordance with the applicable parking requirements must add additional parking spaces if the City Code is later amended so as to require additional parking for new construction, even if the property is subsequently vacated for a period of time. In this case, it is undisputed that the Apartment Project contains the number of parking spaces that were required under the Code at the time the Apartment Project was erected. It is also undisputed that the planned renovations do not include an enlargement or structural modification of the Apartment Project. Therefore, under the express language of the City Code, the Apartment Project meets the parking requirements imposed by the City Code.

RST is not required to get site plan approval based on any other theory. The proposed renovation work on the property does not involve any enlargement, increase, movement or structural alteration of the existing buildings. RST is simply proposing to renovate the existing structures. Therefore, pursuant to Section 24-168 the site plan approval is not required. See Exh. 5.

Rental Housing License

RST is entitled to have its rental housing license renewed. Pursuant to Section 18AA-5, as soon as practicable after receipt of RST's application and the required fee, the city manager is required to schedule an inspection of the Apartment Project. See Exh. 6. Section 18AA-5 further provides that if the inspection discloses a violation, the city manager is required to notify the owner in writing of the nature of the violation and the time within which such correction shall be accomplished. The city manager is required to reinspect following corrective action, and is required to issue a final license after a reinspection evidencing a corrected violation.

If an inspection of the Apartment Project revealed a violation that needed to be cured, the City was required to notify RST of the violation in writing so that RST could cure the violation. The City failed to do so. The February 22, 2007 letter points to no violation of any applicable law, ordinance or regulation as required under Section 18AA-8. It merely states that "[v]iolations of the Code were found" and the property was found "to be vacant, boarded up and without utility service." The Apartment Project does have utility service, it has been boarded up to prevent vandalism as required by the City, and is temporarily vacant because the City is preventing re-occupancy. The City's statements do not place RST on notice of which law, ordinance, or regulation that serves as the basis for the City's failure to issue a license. RST has yet to be informed of what precise violation is to be cured and a time period in which the cure is

to occur. Accordingly, the City has failed to comply procedurally with its obligations under Chapter 18AA. Moreover, to the extent the City maintains that RST's violation is somehow related to its operation as a non-conforming use, such contention would be without merit. The Apartment Project is operating as a valid permissible use within the R-20 zone. Therefore, RST is entitled to have its rental license renewed.

REQUEST FOR RELIEF

RST respectfully requests that the Board of Appeals reverse the determination of the City that RST is required to get site plan approval prior to reoccupation of the property. Moreover, RST asks that the Board of Appeals order the city manager to issue a Rental Housing License to RST for the Apartment Project.

In addition, RST requests that the Board of Appeals consolidate this appeal together with the pending February 14, 2007 appeal, scheduled to be heard on April 12, 2007. RST requests that both appeals be heard on April 12, 2007. In accordance with the requirements of Charter 24, Article VII, Section 24-188(3) of the City Code, RST submits the following in conjunction with this written statement explaining its grievance: (1) all documents upon which the appeal is based, see Exhs. 1 - 6; (2) a certified copy of the official zoning vicinity map surrounding the property, see Exh. 7; (3) a list of the names and addresses of adjoining and confronting property owners or occupants, see Exh. 8; (4) a list of parties to be notified, see Exh. 9; as well as (4) the required fee.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: 

Robert R. Harris, Esq.
Holland & Knight, LLP
3 Bethesda Metro Center
Suite 800
Bethesda, MD 20814

Stephen A. Bogorad, Esq.
Holland & Knight, LLP
2099 Pennsylvania Avenue, N.W.
Suite 101
Washington, DC 20006

Date: March 2, 2007



February 22, 2007

Mr. Robert Harris
Holland and Knight, LLP
3 Bethesda Metro Center, Suite 800
Bethesda, Maryland 20814-6337

RE: West Deer Park Apartments – 70 West Deer Park Road

Dear Mr. Harris:

On behalf of your client, RST Development, the applicant in the above referenced matter, you have made several inquiries into various issues related to the above referenced property. This letter will address each of those inquiries.

Process Required for Reoccupation

You have inquired into what process would be required for your client to move forward with plans to reoccupy the 198 unit West Deer Park apartments for rent, rather than proceed with the 130 unit townhouse project that received final site plan approval on January 4, 2006.

The multi-family use of the property has been vacant and discontinued for more than ninety (90) days. In accordance with the City of Gaithersburg Zoning Ordinance, depending upon what your client proposes for the project, your client will be required to file either an amendment to the current multi-family use site plan or an entirely new site plan. In either case, the site plan application should include those items listed in Section 24-169 of the Zoning Ordinance. A checklist of required items is included herein for reference. I refer you generally to Sections 24-17, 24-169, 24-170, 24-171 and 24-172 of the Zoning Ordinance. Also depending on what your client proposes, an application for a parking waiver might be necessary.

Please note that, if it is your client's position that certain items which are otherwise required are either not warranted or required to be submitted with the amendment or new site plan in this matter, please indicate accordingly as part of the application. In keeping with City procedure, upon review of all materials submitted I will determine whether the application as submitted is complete without the inclusion of those items. If the application is not considered complete, I will contact you to discuss the omitted items.

Letter of February 2, 2007

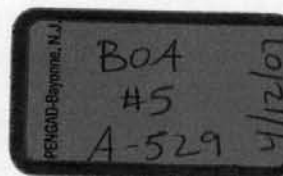
In your letter of February 2, 2007, you raised certain issues regarding the issuance of a rental housing license and electrical permit for the subject property. In addition, on behalf of your client you have filed a petition for administrative review from what you believe to be a final decision on the rental housing license question. The following is provided in answer to those inquiries.

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2098
301-258-6300 • FAX 301-948-6149 • TTY 301-258-6430 • cityhall@gaitersburgmd.gov • www.gaitersburgmd.gov

MAYOR
Sidney A. Katz

COUNCIL MEMBERS
Stanley J. Alster
Geraldine E. Edens
Henry F. Marraffa, Jr.
John B. Schlichting
Michael A. Sesma

CITY MANAGER
David B. Hampton



Mr. Harris
February 22, 2007
Page 2

Rental Housing License

You have asked whether the City's decision not to renew or issue the rental license for the referenced property, as conveyed by Mr. Kevin Roman, Neighborhood Services Director, is the "official, final decision of the City." Please note that my understanding of Mr. Roman's conversation with RST's representative on that issue and what is stated in your letter seem to be substantially different. Therefore, the information conveyed by Mr. Roman is not the "official, final decision of the City."

Please note that the City received your client's application for a renewal of its rental housing license within the time frame provided in Sec. 18AA-6 of the City Code. In accordance with the provisions of Secs. 18AA-5 and 6, the City subsequently conducted an inspection of the property. Violations of the Code were found; the property was found to be vacant, boarded up, and without utility service. Because an appeal related to the property was pending before the Board of Appeals, the City was not able to determine when the violations could be addressed. Therefore, the renewal was not issued at that time.

Electrical Permit

As I noted in a follow-up telephone conversation to you on February 5th, the electrical permit issue has been resolved. The permit was issued by our offices, work completed and final inspection approved on February 7, 2007.

Right of Appeal

Under Section 24-187 of the Zoning Ordinance you have the right to appeal an alleged error in any final order, requirement, decision or determination made by an administrative official or department of the city government to the Board of Appeals (see also Section 18AA-11 of the Code). You have seventeen (17) days from the date of the action from which the appeal is taken to file your petition for administrative review.

I hope this information is helpful. Should you have any questions, please contact me at 301-258-6330.

Sincerely,



Greg Ossont, Director
Planning and Code Administration

Enclosure

cc: D. Humpton
F. Felton
K. Roman
C. Borten

BOARD OF APPEALS

**ADMINISTRATIVE REVIEW
APPLICATION**

Application No.	_____
Date Filed	_____
BOA Hearing	_____
Decision	_____
Date of Decision	_____
Opinion Rendered	_____

In accordance with Chapter 24, Article VII, Section 24-187 thru 190 of the City Code

SUBJECT PROPERTY West Deer Park Apartments

ADDRESS 70 West Deer Park Road **ZONING CLASSIFICATION** R-20

LOT Parcel **ABLOCK** _____ **SUBDIVISION** KRA-GARR Gardens

APPLICANT WDP-RST LLC **TELEPHONE** (301) 816-4242

ADDRESS 6001 Montrose Road, Suite 710, Rockville, MD 20852

If there are co-applicants, provide additional sheet(s) with names, addresses and phone numbers.

NATURE OF APPLICATION

Briefly describe application request **referencing appropriate section of City Code.**

Appeal of Determination by The City of Gaithersburg requiring approval of site
plan amendment for renewal of license to pent pursuant to Section 18AA-6,
18AA-5, 18AA-11, 24-218(a) 24-17, 24-18, 24-19, 24-168.

List case numbers of all applications filed within the past three (3) years pertaining to any portion of subject property.

A-526; SP-05-0010

SUBMISSION REQUIREMENTS

1. **A written statement** explaining the grievance to the Board of Appeals and outlining the history of both applicant's and City's actions in regards to the subject property.
2. **Supporting documentation**, see list on reverse side.
3. **Fees**, see separate schedule.
4. **Transcript costs** (to be charged after completion).

I have read and complied with the submission requirements and affirm that all statements contained herein are true and correct.

Signature

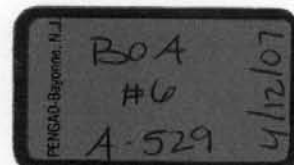


Date

2/14/07

If there are co-applicants, attach additional signature page(s) with signatures and printed names and addresses.

01/2006



**BEFORE THE BOARD OF APPEALS
FOR THE CITY OF GAITHERSBURG, MARYLAND
APPEAL CHARGING ERROR IN
ADMINISTRATIVE ACTION OR DETERMINATION**

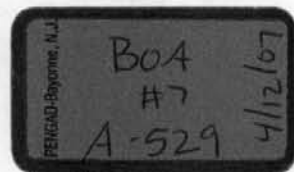
COMES NOW, WDP-RST LLC ("RST"), by its attorneys, and submits the following appeal of the City of Gaithersburg's refusal to issue a Rental Housing License for the multifamily apartment project located at 70 West Deer Park Road, Gaithersburg, Maryland:

STATEMENT OF THE CASE

RST is the owner of certain land and improvements located at 70 West Deer Park Road, Gaithersburg, Maryland and known as West Deer Park Apartments (the "Apartment Project"). The Apartment Project is classified in the R-20 zone (medium density residential) and is developed with multi-family residential buildings that contain 198 dwelling units. These units have been operated as rental apartments since their construction in 1973.

RST purchased the Apartment Project in 2005 and obtained Site Development Approval from the Planning Commission for the redevelopment of the Apartment Project with 130 townhouse units on January 4, 2006. The tenants of the Apartment Project were relocated to facilitate the redevelopment of Apartment Project for townhouses. However, significant declines in the residential housing market and increases in the costs of construction have adversely impacted such proposed redevelopment and therefore RST decided not to proceed with the redevelopment. Instead, RST decided to renovate the existing structures and to continue to operate the Apartment Project as rental apartments in accordance with an existing use and occupancy permit and a then existing rental license (the "Apartment Project"). The renovation work RST plans to perform includes the installation of new cabinets, carpeting and other improvements, but does not involve any structural modifications, changes in the overall number of dwelling units, or increases in the exterior dimensions of, or usable space within, the existing buildings.

RST discussed its proposed renovations of the Apartment Project with City Staff, and City Staff initially agreed with RST that RST would not be required to obtain any approvals from the City to renovate the Apartment Project and continue its operation and occupation as rental apartments. RST made preliminary arrangements to commence the planned renovation of the Apartment Project, but before RST could commence the work, City Staff advised RST that the City *might* take the position some sort of City approval would be required before RST could reoccupy the Apartment Project with tenants. Subsequently, in a meeting that included outside counsel to the City and counsel to RST, outside counsel to the City expressed his belief that RST would need to obtain approval of a site development plan amendment before the Apartment Project could be reoccupied. The City's counsel stated that the basis for this belief was his view that the existing Apartment Project constituted a non-conforming use by virtue of the fact that the number of parking spaces for tenants was slightly less than the number of spaces that would be required under the current City Zoning Code if the existing structures were built today. In a



letter from the Assistant City Manager to RST dated November 8, 2006, the Assistant City Manager advised RST that "the City Attorney's office has determined that you must obtain approval for site plan amendment from the Planning Commission prior to being permitted to reoccupy the existing dwellings at West Deer Park Apartments." See Exh. 1.

Although the November 8, 2006 letter did not appear to be a final decision, and it solicited questions about the City Attorney's position and invited further discussion between RST and the City on the matter, RST, out of an abundance of caution, filed an appeal with the Board of Appeals of the November 8, 2006 letter on November 22, 2006, to be certain that RST was not deemed to have waived its right to challenge the position taken by the City Attorney. See Exh. 2. The City filed a motion to dismiss the appeal on the grounds that it was filed beyond the 17 day appeal period, which began to run when the City's determination was communicated to RST at a meeting on October 23, 2006. The Board of Appeals scheduled a hearing on January 11, 2007, at which time the Board of Appeals conducted an evidentiary hearing on a motion to dismiss. The Board of Appeals ruled that the appeal was not untimely, but it nonetheless dismissed the appeal on the grounds that it was premature. Specifically, the Board of Appeals found that the November 8, 2006 letter was not a final decision of the City, and that as of the close of the hearing on the evening of January 11, 2007, there had still not been a final decision by the City with respect to whether approval of a site development plan amendment would be required before the Apartment Project could be reoccupied. Following the hearing, counsel for the City advised RST's counsel that the City would, shortly after the February 8, 2007 meeting of the Board of Appeals, issue a final written decision with respect to whether the City would require an approval of a site development plan amendment as a prerequisite to the reoccupation of the Apartment Project but, to date, no subsequent final decision has issued.

While awaiting the City's final decision, and consistent with its right to continue to use the Apartment Project for multifamily rental use, on January 18, 2007, RST's electrician was granted a Temporary Power Permit, Permit # PI-EO70013, authorizing the electrician to perform work necessary for RST to restore power to the Apartment Project. See Exh. 3. After the City issued the permit, RST's electrician performed the necessary work in accordance with the Code. The City was scheduled to inspect the work, which inspection is a pre-requisite for restoration of electrical power, on Monday, January 29, 2007. On Friday, January 26, 2007, the City informed RST's electrician that the City would not perform the inspection due to issues unrelated to the permit. Since the City's refusal to inspect the work was based on reasons unrelated to the permit, RST assumed that such refusal was based on the City's stated, but not yet final position that RST needs to obtain approval of a site development plan amendment before RST may reoccupy the Apartment Project. Shortly thereafter, in response to a letter from RST's counsel complaining about the City's wrongful refusal to inspect the work performed by RST's electrician, the City reversed itself and scheduled the necessary inspection. On February 7, 2007, the City inspector approved the work performed by RST's electrician, clearing the way for RST to restore electricity to the Apartment Project and to commence renovations in the Apartment Project.

The Rental Housing License for the Apartment Project in force (issued to the prior owner of the Apartment Project) when RST acquired the property was set to expire on January 31, 2007. See Exh. 4. RST filed the appropriate papers, along with a check in the amount of \$19,800.00, to obtain issuance of a new Rental Housing License. See Exh. 5. The City never

returned the \$19,800.00 check RST sent in connection with the renewal license. On Monday, January 29, 2007, Kevin Roman, a City employee, informed RST that the City would not renew RST's license to rent the apartments at the Apartment Project because the City no longer recognized the Apartment Project as property that can be utilized as an apartment complex. Mr. Roman did not provide any other reason for the City's refusal to issue the Rental Housing License, and he stated that any questions RST had with respect to the City's position should be directed to the Director of the Planning and Code Administration, Greg Ossant, a City official with whom RST had previously communicated with respect to the City's position that a site development plan amendment was necessary.

On Friday, February 2, 2007, RST's counsel wrote to the City's counsel seeking to confirm that the City was in fact refusing to issue a Rental Housing License based on the City's position that multi-family residential use of the Apartment Project was not a permitted use. See Exh. 6. In that letter, RST's counsel stated that unless the City rescinded its refusal to renew or issue the license on or before February 6, 2007, RST would treat that refusal as a final decision. On February 9, 2007, following the City's receipt of the February 2, 2007 letter from RST's counsel, Mr. Ossant advised RST that the City would issue a letter explaining its position. The Board of Appeals further informed RST's counsel, on February 9, 2007, that they would be mailing a formal resolution concerning the Apartment Project's status as a non-conforming use. However, the City has not issued any such letter, so, out of an abundance of caution, RST is treating the January 29, 2007 phone call from Kevin Roman as a final decision, and is appealing the decision not to issue the Rental Housing License.

DISCUSSION AND ARGUMENTS

Based on various provisions of Chapter 18AA and Chapter 24 of the City of Gaithersburg Municipal Code (the "Code"), the City clearly erred in reaching its decision that RST is not entitled to issuance of a Rental Housing License.

Pursuant to Section 18AA-5, as soon as practicable after receipt of RST's application and the required fee, the city manager was required to schedule an inspection of the Apartment Project. See Exh. 7. Section 18AA-5 further provides that if the inspection discloses no violation of any applicable law or other regulation, the city manager is required to issue a final license. On the other hand, if the inspection discloses a violation, the city manager is required to notify the owner in writing of the nature of the violation and the time within which such correction shall be accomplished. The city manager is required to reinspect following corrective action, and is required to issue a final license after a reinspection evidencing a corrected violation.

Upon information and belief, upon receipt of RST's application and the required fee, the city manager did not cause an inspection to be conducted of the Apartment Project, as he was required to do. Moreover, even if an inspection was conducted, the City has not issued a Rental Housing License for the Apartment Project and has not notified RST, in writing, of the nature of any violation and the time within which such violation should be corrected. Accordingly, the City has failed to comply with its obligations under Chapter 18AA.

The grounds stated by Kevin Roman in support of the City's refusal to issue a Rental Housing License – that the City no longer recognizes the Apartment Project as a property that can be utilized for rental apartments – is not a valid reason to deny the issuance of a Rental Housing License. If an inspection of the Apartment Project revealed a violation that needed to be cured, the City was required to notify RST of the violation in writing so that RST could cure the violation. Since the City did not so notify RST of any violation, the City was required to issue a Rental Housing License.

The position espoused by the City's attorney (but not yet rendered as a final decision by the City), that use of the Apartment Project for rent to tenants is a non-conforming use because of the number of parking spaces available is similarly contrary to law. Pursuant to Section 24-218(a), the number of parking spaces required for a multi-family housing project is determined at the time the residential buildings are erected, enlarged or structurally modified. See Exh. 8. There is no requirement that an owner of property must add additional parking spaces if the City Code is amended after erection of the improvements to require additional parking for new construction, even if the property is subsequently vacated for a period of time. In this case, it is undisputed that the Apartment Project contains the number of parking spaces that were required under the Code at the time the Apartment Project was erected. It is also undisputed that the planned renovations do not include an enlargement or structural modification of the Apartment Project. Therefore, under the express language of the City Code, the Apartment Project meets the parking requirements imposed by the City Code.

Pursuant to Section 24-56 of the City Zoning Code, which identifies the uses permitted in the R-20 zone, multi-family residential uses and accessory uses such as off-street parking, are permitted by right. Rental apartment uses have always been permitted on the Property under the standards of the R-20 zone, and the continuation of such uses would likewise be permitted under the Zoning Ordinance. See Exh. 8.

The property has not undergone any change in use which would deem it a non-conforming use. The proposed renovation work on the Property does not involve any enlargement, increase, movement or structural alteration of the existing buildings. RST is simply proposing to renovate the existing structures. Therefore, pursuant to Sections 24-17, 24-18 and 24-19 of the Code, the provisions applicable to non-conforming uses do not apply. See Exh. 8. In addition, Section 24-20 allows renovation and repair work to occur even on non-conforming uses where such work does not exceed 10% of the current replacement value of the structure. The proposed work does not exceed that amount. Moreover, pursuant to Section 24-168, there is no contemplated erection, movement, addition or structural alteration to the buildings that would require a site development plan amendment. See Exh. 8. RST is simply upgrading the existing structures.

REQUEST FOR RELIEF

Pursuant to Section 18AA-11, RST respectfully requests that the Board of Appeals reverse the determination of the City that RST is not entitled to issuance of a Rental Housing

License, and that the Board of Appeals order the city manager to issue a Rental Housing License to RST for the Apartment Project. In accordance with the requirements of Charter 24, Article VII, Section 24-188(3) of the City Code, RST submits the following in conjunction with this written statement explaining its grievance: (1) all documents upon which the appeal is based, see Exhs. 1 - 8; (2) a copy of the official zoning vicinity map surrounding the property, see Exh. 9; (3) a list of the names and addresses of adjoining and confronting property owners or occupants, see Exh. 10; (4) a list of parties to be notified, see Exh. 11; as well as (4) the required fee.

Respectfully submitted,
HOLLAND & KNIGHT, LLP

By: 

Robert R. Harris, Esq.
Holland & Knight, LLP
3 Bethesda Metro Center
Suite 800
Bethesda, MD 20814

Stephen A. Bogorad, Esq.
Holland & Knight, LLP
2099 Pennsylvania Avenue, N.W.
Suite 101
Washington, DC 20006

Date: February 14, 2007

4343100_v2

RENTAL HOUSING LICENSE
CITY OF GAITHERSBURGTHIS IS TO CERTIFY THAT West Deer Park Apartments HAS BEEN ISSUED A**FINAL**
LICENSE FOR A

- ☒ Multiple Family Dwelling
☐ Single Family Dwelling, Condominium or Townhouse
☐ Hotel/Motel
☐ Room(s)

ADDRESS: 72-A West Deer Park Road

Pursuant to provisions of Chapter 18AA Laws of Gaithersburg entitled, "Licensing of Rental Housing" license is hereby given to the above named to operate premises described above for a period of two years. This license shall be subject to suspension or revocation upon failure of licensee to maintain the premises in accordance with the Laws of Gaithersburg throughout the period of the license.

DATE ISSUED:

EXPIRES

UNITS 198

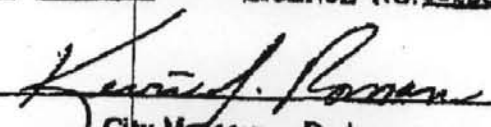
TEMPORARY

FEE PAID \$19,800.00

FINAL

1/28/051/31/07LICENSE NO. 00128

BY


City Manager or Designee

NEIGHBORHOOD SERVICES
 Neighborhoods@galthersburgmd.gov
 Telephone: (301) 258-6340
 Fax: (301) 258-6174

MULTI-FAMILY RENTAL FACILITY LICENSE APPLICATION

(In accordance with Chapter 13 and 18AA of the City Code)
 All questions must be answered. Please type or print clearly in ink.

I. RENTAL FACILITY INFORMATION

Name of Facility West Deer Park Apartments
 Address 72-A West Deer Park Road
 City License Number 00128 Expiration Date 1/31/07
 Telephone 301-366-4889 Fax 301-565-0059
 Emergency Telephone (evenings and weekends) 202-409-5323

II. RESIDENTIAL DWELLING INFORMATION

- A. 6 Total number of buildings
 B. 198 Total number of residential dwelling units. (Exclude model apartments and units used exclusively for business purposes, such as the resident manager's office.)

☒ Please attach a current rent roll or an address list, including each building number and all apartment numbers in that building, for the entire complex.

III. FORM OF OWNERSHIP. Please choose from the four types listed.

☐ SOLE PROPRIETORSHIP

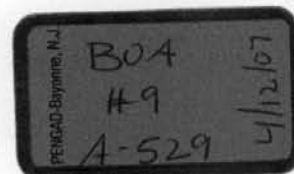
Property is owned by one individual, or by husband and wife.

A. Individual

Name (first, middle, last) _____
 Address _____
 City _____ State _____ Zip Code _____
 Daytime Telephone _____ Secondary Telephone _____

B. Name of Spouse (if applicable)

Address _____
 City _____ State _____ Zip Code _____
 Daytime Telephone _____ Secondary Telephone _____



☒ PARTNERSHIP

(General Partnership, Joint Venture, Limited Partnership, ect.)

Property is owned by two or more individuals, two or more corporations, or a combination of legal entities recognized by Maryland laws as able to do business as a partnership.

A. Trade name of Partnership, if not doing business under a trade name write NONE.

Name of Partnership WDP-RST, LLC
Contact Person Todd Copeland
Address 168 Business Park Drive, Suite 200
City Virginia Beach State VA Zip Code 23462
Daytime Telephone 757-473-3706 Secondary Telephone 757-589-0535

B. General Partner involved in the partnership of the facility.
Attach additional sheets as needed.

1. General Partner

Name (first, middle, last) RST III, LLC (100% owner of WDP-RST, LLC)
Address 168 Business Park Dr #200 City Virginia Beach
State VA Zip Code 23462 Telephone 757-473-3706

2. General Partner

Name (first, middle, last) Robert O. Copeland (Co-Member of RST III, LLC)
Address 1332 Penguin Circle City Virginia Beach
State VA Zip Code 23451 Telephone 757-425-0360

3. General Partner

Name (first, middle, last) Todd A. Copeland (Co-Member of RST III, LLC)
Address 324 Bay Colony Dr. City Virginia Beach
State VA Zip Code 23451 Telephone 757-496-3977

4. General Partner

Name (first, middle, last) M. Scott Copeland (Co-Member of RST III, LLC)
Address 6200 Poindexter Ln. City Rockville
State MD Zip Code 20852 Telephone 703-328-2648

5. General Partner

Name (first, middle, last) _____
Address _____ City _____
State _____ Zip Code _____ Telephone _____

☐ CORPORATION

Property is owned by a firm doing business as a corporation and legally chartered or registered to conduct business through the State of Maryland.

A. Corporation information

Full legal name of Corporation _____
Business Address _____
City _____ State _____ Zip Code _____
Contact Person _____ Telephone _____

B. Principal Officer information

1. Principal Officer

Name (first, middle, last) _____
Address _____ City _____
State _____ Zip Code _____ Telephone _____

2. Principal Officer

Name (first, middle, last) _____
Address _____ City _____
State _____ Zip Code _____ Telephone _____

3. Principal Officer

Name (first, middle, last) _____
Address _____ City _____
State _____ Zip Code _____ Telephone _____

4. Principal Officer

Name (first, middle, last) _____
Address _____ City _____
State _____ Zip Code _____ Telephone _____

C. Agent information

This section does not apply to Maryland chartered corporations. If the corporation was not chartered by the State of Maryland, list the agent information of its registered agent residing in Maryland. This agent must be able to accept service of process on behalf of the corporation named above. Agents must be registered with the State of Maryland Department of Licensing and Assessments in Baltimore, Maryland.

Name of Agent (first, middle, last) _____
Address _____ City _____
State _____ Zip Code _____ Telephone _____

☐ TRUST

Trust or other form of fiduciary relationship.

Trust information or other fiduciary responsible for the execution of all matters pertaining to the day-to-day operations of the facility.

Name of Trust _____
Court of Jurisdiction _____
Name of Trustee or Fiduciary _____
Address _____
State _____ Zip Code _____ Telephone _____

IV. ASSIGNMENT OF AGENCY

If it desired that City of Gaithersburg deal with, negotiate with, or otherwise transact business with an agent of the owner, list the name, address, and telephone number of such individuals or firm. It shall be assumed that the agency thus created is complete and all-inclusive of the powers and authorities vested in the owner, unless otherwise stipulated. If it is desired that the City of Gaithersburg deal directly with the owner, please write NONE in the space below. If the name of a firm is provided, such firm must be a legal entity as recognized by the State of Maryland.

☐ Individual

☐ Firm

Name of Firm/Agent _____
Address _____
State _____ Zip Code _____ Telephone _____

V. MANAGEMENT

If the day-to-day management of the facility is handled by a firm or individual other than the owner, list name and contact information of such a firm or individual. If the same as in section IV, write SAME. If not applicable write NONE.

☐ Individual

☒ Firm

Name of Firm/Agent Hercules Real Estate Services, Inc.
Address 168 Business Park Drive, Suite 103, Virginia Beach
State VA Zip Code 23462 Telephone 757-473-3706

VI. OFFICE MANAGER

If the rental facility posses a resident or office manager, please list.
If there is no manager, please write NONE in the space.

Name of Manager Michael Shell
Address 8060 13th Street, Silver Spring
State MD Zip Code 20910 Telephone 301-565-0058

VII. LEGAL SERVICE OF PROCESS

If the owner of the rental facility does not reside in the State of Maryland, and the agent assigned, per section IV, does not reside in the State of Maryland, the owner must provide the name and contact information of an agent who does reside in Maryland, and is qualified to accept services on behalf of the owner.

☒ Owner resides in Maryland

☐ Owner does not reside in Maryland

Name of Agent _____
Address _____
State _____ Zip Code _____ Telephone _____

VII. OWNER'S SIGNATURE

I herby affirm under penalty of perjury that the information on this application for a rental facility license is true to the best of my knowledge and belief.

Name of Owner (print) Robert O. Copeland
Signature of Owner Robert O. Copeland Date 11/6/06

Name of Co-owner, if applicable (print) Todd A. Copeland
Signature Todd A. Copeland Date 11/6/06

Name of Co-owner, if applicable (print) M. Scott Copeland
Signature M. Scott Copeland Date 11/6/06

Name of Co-owner, if applicable (print) _____
Signature _____ Date _____

RST III, LLC

CITYGALTHE City of Gaithersburg

DATE	INVOICE NO	DESCRIPTION	INVOICE AMOUNT	DEDUCTION	BALANCE
11/06/06	110606	WDP Rental Lic Applic	19800.00	.00	19800.00
CHECK DATE	11/06/06	CHECK NUMBER	4470	TOTAL >	19800.00
				19800.00	.00

PLEASE DETACH AND RETAIN FOR YOUR RECORDS

RST III, LLC

168 Business Park Drive, STE 200
Virginia Beach, VA 23462

BB&T
Virginia Beach, VA 23455

DATE November 6, 2006 CHECK NO. 4470 AMOUNT \$*****19,800.00

Pay: *****Nineteen thousand eight hundred dollars and no cents

PAY TO THE ORDER OF City of Gaithersburg



⑈0000004470⑈ ⑆051404260⑆0005133440447⑈

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08/17/2006

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HERCULES REAL ESTATE SERVICES

West Deer Park Apartments

Rent Roll

As Of 6 Jul 2006

Grouping Codes Included: ABCDEFGHIJKLMNOPQRSTUVWXYZ

Page 1

ID 3.6.6

Unit #	Name	Type	Sq. Ft.	Autobill	Deposit	Moved In	Lease Ends	Status
56-T1	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
56-T2	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
56-T3	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
56-T4	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
58-T1	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
58-T4	Vacant	2BR2B	1,200	1,255.00	0.00			VU
60-T1	Vacant	1BR1	900	1,120.00	0.00			VU
60-T2	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
60-T3	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
60-T4	Vacant	3BR2	1,360	1,455.00	0.00			VU
62-T1	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
62-T2	Vacant	2BR/2BA	1,200	1,255.00	0.00			VU
62-T3	Vacant	2BR2B	1,200	1,255.00	0.00			VU
62-T4	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
64-T1	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
64-T2	Vacant	3BR2	1,360	1,455.00	0.00			VU
64-T3	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
64-T4	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
66-T1	Vacant	1BR1	900	1,120.00	0.00			VU
66-T2	Vacant	1BR1	900	1,120.00	0.00			VU
66-T3	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
66-T4	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
68-T1	Vacant	2BR2B	1,200	1,255.00	0.00			VU
68-T2	Vacant	2BR2B	1,200	1,255.00	0.00			VU
68-T3	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
68-T4	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
70-T1	Vacant	2BR2B	1,200	1,255.00	0.00			VU
70-T2	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
70-T3	Vacant	2BR2B	1,200	1,255.00	0.00			VU
70-T4	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
72-T1	Vacant	1BR1	900	1,120.00	0.00			VU
72-T2	Vacant	1BR1	900	1,120.00	0.00			VU
72-T3	Vacant	3BR2	1,360	1,455.00	0.00			VU
72-T4	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
74-T1	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
74-T2	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
74-T3	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
74-T4	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
76-T1	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
76-T2	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
76-T3	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
76-T4	Vacant	3BR2	1,360	1,455.00	0.00			VU
78-T1	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
78-T2	Vacant	2BR2B	1,200	1,255.00	0.00			VU
78-T3	Vacant	2BR2B	1,200	1,255.00	0.00			VU
78-T4	Vacant	2BR2B	1,200	1,255.00	0.00			VU
80-T1	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
80-T2	Vacant	3BR2	1,360	1,455.00	0.00			VU

FENGAD-Bayonne, N.J.

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#11
A-529

4/12/07

08/17/2006

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HERCULES REAL ESTATE SERVICES

West Deer Park Apartments

Rent Roll

As Of 5 Jul 2006

Page 2

ID 3.6.6

Grouping Codes Included: ABCDEFGHIJKLMNOPQRSTUVWXYZ

Unit #	Name	Type	Sq. Ft.	Autobill	Deposit	Moved In	Lease Ends	Status
80-T3	Vacant	1BR1	900	1,120.00	0.00			VU
80-T4	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
82-T1	Vacant	2BR2B	1,200	1,255.00	0.00			VU
82-T2	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
82-T3	Vacant	2BR2B	1,200	1,255.00	0.00			VU
82-T4	Vacant	2BR2B	1,200	1,255.00	0.00			VU
84-T1	Vacant	2BR2B	1,200	1,255.00	0.00			VU
84-T2	Vacant	2BR2B	1,200	1,255.00	0.00			VU
84-T3	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
84-T4	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-T1	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-T2	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
86-T3	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-T4	Vacant	2BR2B	1,200	1,255.00	0.00			VU
88-T1	Vacant	2BR2B	1,200	1,255.00	0.00			VU
88-T2	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
88-T3	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
88-T4	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
56-101	Vacant	2BR2B	1,200	1,255.00	0.00			VU
56-102	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
56-103	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
56-104	Vacant	2BR2B	1,200	1,255.00	0.00			VU
56-201	Vacant	2BR2B	1,200	1,255.00	0.00			VU
56-202	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
56-203	Vacant	2BR2BDRK	1,300	1,485.00	0.00			VU
56-204	Vacant	2BR2B	1,200	1,255.00	0.00			VU
58-103	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
58-104	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
58-203	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
58-204	Vacant	2BR2B	1,200	1,255.00	0.00			VU
60-101	Vacant	1BR1	900	1,120.00	0.00			VU
60-102	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
60-103	Vacant	3BR2	1,360	1,455.00	0.00			VU
60-104	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
60-201	Vacant	1BR1	900	1,120.00	0.00			VU
60-202	Vacant	1BRD	900	1,165.00	0.00			VU
60-203	Vacant	3BR2	1,360	1,455.00	0.00			VU
60-204	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
62-101	Vacant	2BR2B	1,200	1,255.00	0.00			VU
62-102	Vacant	2BR2B	1,200	1,255.00	0.00			VU
62-103	Vacant	2BR2B	1,200	1,255.00	0.00			VU
62-104	Vacant	2BR2B	1,200	1,255.00	0.00			VU
62-201	Vacant	2BR2B	1,200	1,255.00	0.00			VU
62-202	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
62-203	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
62-204	Vacant	2BR2B	1,200	1,255.00	0.00			VU
64-101	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
64-102	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU

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HERCULES REAL ESTATE SERVICES

West Deer Park Apartments

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Grouping Codes Included: ABCDEFGHIJKLMNOPQRSTUVWXYZ

Unit #	Name	Type	Sq. Ft.	Autobill	Deposit	Moved In	Lease Ends	Status
64-103	Vacant	1BR1	900	1,120.00	0.00			VU
64-104	Vacant	1BR1	900	1,120.00	0.00			VU
64-201	Vacant	3BR2	1,360	1,455.00	0.00			VU
64-202	Vacant	3BR2	1,360	1,455.00	0.00			VU
64-203	Vacant	1B/D/REH	1,000	1,290.00	0.00			VU
64-204	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
66-101	Vacant	1BR1	900	1,120.00	0.00			VU
66-102	Vacant	1BR1	900	1,120.00	0.00			VU
66-103	Vacant	3BR2	1,360	1,455.00	0.00			VU
66-104	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
66-201	Vacant	1BR1	900	1,120.00	0.00			VU
66-202	Vacant	1B/D/REH	1,000	1,290.00	0.00			VU
66-203	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
66-204	Vacant	3BR2	1,360	1,455.00	0.00			VU
68-101	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
68-102	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
68-103	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
68-104	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
68-201	Vacant	2BR2B	1,200	1,255.00	0.00			VU
68-202	Vacant	2BR2BDRE	1,300	1,485.00	0.00			VU
68-203	Vacant	2BR2B	1,200	1,255.00	0.00			VU
68-204	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
70-101	Vacant	2BR2B	1,200	1,255.00	0.00			VU
70-102	Vacant	2BR2B	1,200	1,255.00	0.00			VU
70-103	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
70-104	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
70-201	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
70-202	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
70-203	Vacant	2BR2B	1,200	1,255.00	0.00			VU
70-204	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
72-101	Vacant	1BR1	900	1,120.00	0.00			VU
72-102	Vacant	1BR1	900	1,120.00	0.00			VU
72-103	Vacant	3BR2	1,360	1,455.00	0.00			VU
72-104	Vacant	3BR2	1,360	1,455.00	0.00			VU
72-201	Vacant	1BR2	900	1,120.00	0.00			VU
72-202	Vacant	1B/D/REH	1,000	1,290.00	0.00			VU
72-203	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
72-204	Vacant	3BR2	1,360	1,455.00	0.00			VU
74-101	Vacant	1BR1	900	1,120.00	0.00			VU
74-102	Vacant	1BR1	900	1,120.00	0.00			VU
74-103	Vacant	3BR2	1,360	1,455.00	0.00			VU
74-104	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
74-201	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
74-202	Vacant	1BRD	900	1,165.00	0.00			VU
74-203	Vacant	3BR2	1,360	1,455.00	0.00			VU
74-204	Vacant	3BR2	1,360	1,455.00	0.00			VU
76-101	Vacant	1BR1	900	1,120.00	0.00			VU
76-102	Vacant	1BR1	900	1,120.00	0.00			VU

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HERCULES REAL ESTATE SERVICES

West Deer Park Apartments

Rent Roll

As Of 6 Jul 2006

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Grouping Codes Included: ABCDEFGHIJKLMNOPQRSTUVWXYZ

Unit #	Name	Type	Sq.Ft.	Autobill	Deposit	Moved In	Lease Ends	Status
76-103	Vacant	3BR2	1,360	1,455.00	0.00			VU
76-104	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
76-201	Vacant	1BR1	900	1,120.00	0.00			VU
76-202	Vacant	1B/D/REH	1,000	1,290.00	0.00			VU
76-203	Vacant	3BR2	1,360	1,455.00	0.00			VU
76-204	Vacant	3BR2	1,360	1,455.00	0.00			VU
78-101	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
78-102	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
78-103	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
78-104	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
78-201	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
78-202	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
78-203	Vacant	2BR2B	1,200	1,255.00	0.00			VU
78-204	Vacant	2BR2B	1,200	1,255.00	0.00			VU
80-101	Vacant	3BR2	1,360	1,455.00	0.00			VU
80-102	Vacant	3BR2	1,360	1,455.00	0.00			VU
80-103	Vacant	2BR/1/RE	1,200	1,330.00	0.00			VU
80-104	Vacant	2BR1B1	1,200	1,185.00	0.00			VU
80-201	Vacant	3BR2	1,360	1,455.00	0.00			VU
80-202	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
80-203	Vacant	2BR1BDRE	1,300	1,430.00	0.00			VU
80-204	Vacant	2BR/1/RE	1,200	1,330.00	0.00			VU
82-101	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
82-102	Vacant	2BR2B	1,200	1,255.00	0.00			VU
82-103	Vacant	2BR2B	1,200	1,255.00	0.00			VU
82-104	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
82-201	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
82-202	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
82-203	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
82-204	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
84-101	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
84-102	Vacant	2BR2B	1,200	1,255.00	0.00			VU
84-103	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
84-104	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
84-201	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
84-202	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
84-203	Vacant	2BR2B	1,200	1,255.00	0.00			VU
84-204	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-101	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-102	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-103	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-104	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-201	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
86-202	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
86-203	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
86-204	Vacant	2BR2B	1,200	1,255.00	0.00			VU
88-101	Vacant	2BR2B	1,200	1,255.00	0.00			VU
88-102	Vacant	2BR2B	1,200	1,255.00	0.00			VU

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HERCULES REAL ESTATE SERVICES
West Deer Park Apartments
Rent Roll

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As Of 6 Jul 2006

Grouping Codes Included: ABCDEFGHIJKLMNOPQRSTUVWXYZ

Unit #	Name	Type	Sq.Ft.	Autobill	Deposit	Moved In	Lease Ends	Status
88-103	Vacant	2BR2B	1,200	1,255.00	0.00			VU
88-104	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
88-201	Vacant	2BR2B	1,200	1,255.00	0.00			VU
88-202	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
88-203	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
88-204	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU

Code	Status	# Units	Rent Schedule	Amount
O	Occupied, No Notice	0	Units Occupied--Actual Rents	0.00
NU	Occupied, Notice Unrented	0	Units Vacant--Vacant Potential	264,265.00
NR	Occupied, Notice Rented	0		
VU	Vacant, Unrented	198	100% (Gross) Potential Value	264,265.00
VR	Vacant, Rented	0		
SU	Charging A Skip, Unrented	0	Total Deposits	0.00
SR	Charging A Skip, Rented	0	Total Rentable Square Feet	233,620
Total Units		198		

GAITHERSBURG
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PENNSA-Bojone, N.J.

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Sec. 18AA-5. Same--Issuance.

(a) Upon receipt of a properly completed application and the required fee, the city manager shall issue a temporary license to expire six (6) months after the date of issuance. As soon as practicable thereafter, the city manager shall cause an inspection to be made of the premises described in the application. If the inspection discloses no violation of any applicable law or other regulation, the city manager shall issue a final license. The license shall be posted in a conspicuous place on the premises or maintained in the custody of the resident manager. If the inspection discloses a violation, the city manager shall notify the owner in writing of the nature of the violation and the time within which such correction shall be accomplished. The final license shall be issued after reinspection evidencing a corrected violation, and the final license shall expire two (2) years from the date of issuance of the temporary license. In the event violations have not been corrected upon reinspection, or no authorized person was present to accompany the city inspector upon reinspection, the temporary license shall be revoked unless an extension thereof has been granted by the city manager for good cause shown. Upon revocation of any temporary or final license, the unlicensed units may be ordered vacated by the city manager, and/or a reinspection may be ordered upon the payment of a reinspection fee in an amount prescribed by resolution of the city council.

(b) If the application is for premises less than two (2) years old at the time of application, no temporary license shall be issued, but a final license shall be issued promptly after the satisfactory completion of all inspections required by other applicable laws, ordinances or regulations and rental application has been filed with the city manager.

(c) All multifamily apartment houses shall be issued a final license upon receipt of a completed application form and fee which shall be established by resolution of the city council. (Ord. No. O-12-90, 6-4-90)

Sec. 18AA-6. Same--Renewal.

At least ninety (90) days prior to the expiration of a final license, the holder thereof shall apply for renewal thereof. The city manager shall cause an inspection of the premises to be made after which the procedures shall be as set forth in subsection (a) of section 18AA-5.

When a rental property becomes owner occupied, the previous owner must inform the city manager to remove the property from the listed rental stock on file with the city. (Ord. No. O-12-90, 6-4-90)

Sec. 18AA-7. Inspections.

An inspection is required for all rental housing units. When an inspection is required of a building containing more than two (2) dwelling units, the city manager may designate the number of units to be inspected and how often.

(Ord. No. O-12-90, 6-4-90)

Sec. 18AA-8. Violation after license issued.

If, after a final license has been issued, the city manager shall discover, in a rental housing unit, a violation of any applicable law, ordinance or regulation, he shall give the owner the notice required by subsection (a) of section 18AA-5. If the correction is not completed within the time stated in the notice or any extension thereof by the city manager, the city manager may revoke the license for the premises in which such rental housing unit is located. Should the temporary or final license be revoked, the city manager shall cause an inspection of the premise to be made, the procedure for which shall be as set forth in subsection (a) of section 18AA-5. (Ord. No. O-12-90, 6-4-90)

Sec. 18AA-9. Violations generally; injunctive relief.

Violations of this chapter are declared to be municipal infractions and enforceable pursuant to the provisions of section 1-9. The maximum penalty for each initial and repeat violation shall be established by the city council.

In addition thereto, the city may institute injunctive, mandamus or any other appropriate action or proceedings at law or equity for enforcement of this chapter or to correct violation of this chapter, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions or mandamus or other appropriate form of remedy or relief. (Ord. No. O-12-90, 6-4-90)

Sec. 18AA-10. Transferability of license.

When property licensed hereunder is transferred to another owner, the license may be transferred to the new owner upon written application therefor to the city manager and payment of such fee as shall be prescribed by the city council by resolution.

(Ord. No. O-12-90, 6-4-90)

Sec. 18AA-11. Appeals.

Any action of the city manager under this chapter shall be subject to appeal to the city board of appeals as provided in sections 24-187 through 24-193.

(Ord. No. O-12-90, 6-4-90)

Sec. 18AA-12. Consent to inspection.

The submission of an application for a license hereunder shall constitute continuing assent by the owner of the premises described in the application to inspection of the premises by the city manager during reasonable hours.

(Ord. No. O-12-90, 6-4-90)

Dwelling, two-family. A residence designed for or occupied by two (2) families only, with separate housekeeping and cooking facilities for each.

Family. One or more persons occupying a single housekeeping unit and using common cooking facilities; provided, that unless all members are related by blood or marriage, no such family shall contain over five (5) persons.

Hotel. Any building containing ten (10) or more guest rooms where, for compensation, lodging, meals or both are provided for ten (10) or more guests, excluding a fraternity or sorority house, school or college dormitory, tourist home, motel or hotel-apartment as defined herein.

Mobile home. A moveable or portable dwelling built on a chassis connected to utilities and designed without permanent foundation for year-round living.

Owner. Any person, firm, partnership, association, company or corporation having a legal or equitable interest in the rental facility, including, but not limited to, a mortgagee and an assignee of rents. It shall also mean any person who, alone or jointly or severally with others, shall have the charge, care or control of any structure as executor, administrator, trustee or guardian of the estate of the owner. Any person, firm, company, association or corporation whose name appears on the property tax bills shall be deemed to be owner of the rental property.

Rental housing unit. Any space in any building which for a consideration is made available to a person or persons for dwelling or lodging purposes and, in any building containing three (3) or more rental housing units, spaces within the building used for access, storage, trash disposal, cleaning, utilities or recreational purposes. Rental housing units may be contained within single-family, two-family and multiple-family dwellings, townhouses, urban cottages, mobile homes, rooming house, boarding house, dormitory, tourist home, hotel, motel and apartment-hotel as defined herein, provided they are otherwise allowed by Chapter 24 of this Code.

Roominghouse. A dwelling in which lodging is furnished for compensation to at least three (3) but not more than five (5) guests. Any roominghouse lawfully established on October 1, 1985, under regulations previously in effect as to the permissible number of guests, may continue to operate under the requirements in force prior to October 1, 1985, and shall not be considered a nonconforming use.

Townhouse. One of a group of three (3) or more dwelling units in the same building, each of which units is separated from any adjacent unit by a continuous vertical party wall without openings extending from the lowest floor level of the unit to the highest point of the roof along the party wall division line, and each of which dwelling units has its own entrance directly from the outside.

Urban cottage. A subordinate dwelling unit, either freestanding or part of another structure on a lot, that because of its size, facilities or usage is secondary to the primary dwelling unit located on the lot.

(Ord. No. O-12-90, 6-4-90; Ord. No. O-14-93, 11-1-93)

Sec. 18AA-3. License--Required.

All owners of any occupied rental housing units must have a valid, unrevoked license issued by the city manager pursuant to this chapter.

(Ord. No. O-12-90, 6-4-90)

Sec. 18AA-4. Same--Application; fees.

The owner of any rental housing unit within the city which is occupied shall deliver to the city manager on a form to be supplied by the city manager, an application for the license hereinabove required, signed by the owner or his authorized agent. The application shall be filed before any such unit is occupied or permitted to be occupied. Such application shall be accompanied by a fee which shall be established by resolution of the city council.

(Ord. No. O-12-90, 6-4-90)

GAITHERSBURG

CITY

CODE

PERCUT-Bayonne, N.J.

BOA
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B—*Interior lot*, defined as a lot other than a corner lot with only one frontage on a street other than an alley.

C—*Through lot*, defined as a lot other than a corner lot with frontage on more than one street other than an alley. Through lots with frontage on two (2) streets may be referred to as double frontage lots.

D—*Reversed frontage lot*, defined as a lot in which the frontage is at right angles or approximately right angles to the general pattern in the area involved. A reversed frontage lot may also be a corner lot or an interior lot (see A-I and B-D in the diagram).

Medical care building. An establishment where patients are accepted for special study and treatment by a group of physicians practicing medicine together.

Medical practitioner. A licensed physician, surgeon, dentist, osteopath, chiropractor or similar practitioner.

Mining, quarrying or earth removing. The excavation of any natural mineral deposit or soil for commercial sale.

Mobile home. A movable or portable dwelling built on a chassis connected to utilities and designed without a permanent foundation for year-round living.

Mobile home park. Any plot of ground of at least eight (8) acres upon which a minimum of ten (10) mobile home spaces are located.

Monopole. A single, freestanding pole-type structure, tapering from base to top and supporting one or more antenna. For purposes of this chapter, a monopole is not a tower.

Motel. Any group of guest rooms, combined or separated, used for the purpose of housing short-term transient guests, each unit of which is provided with its own toilet and washroom facilities, but do not include kitchen or kitchenette facilities or equipment in the guest units.

Nonconforming use. A use of a building or of land lawfully existing at the time this chapter or the previous zoning ordinance became effective and which does not conform with the use regulations of the zone in which it is located.

Opiate addiction treatment facility. A facility operated privately and not by a governmental unit that is registered with the Drug Enforcement Administration, which administers methadone or levo-alpha-acetyl-methadone (LAAM) as part of a maintenance or treatment program for opiate dependent persons. An opiate addiction treatment facility is not a clinic or medical or professional office as those uses are applied in this zoning ordinance.

Outdoor advertising business. Provision of outdoor displays or display space on a lease or rental basis only.

Outlot. A parcel of land shown on a record plat but inadequate as a buildable lot due to insufficient size or frontage. Adjoining outlots in adjacent subdivisions may be used as a lot if combined they meet the minimum requirements for area and frontage imposed by this chapter in the zone in which they are situated.

If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are not of record on March 22, 1965, or at the time of passage of an amendment of this chapter, and if all or part of the lot do not meet the requirements for lot width and area as established by this chapter, the land involved shall be considered to be an undivided parcel for the purpose of this chapter, and no portion of such parcel shall be used or sold which does not meet lot width and area requirements established by this chapter, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this chapter.

(Ord. No. O-2-65, art. 1, § 4)

Sec. 24-16. Exceptions for certain dimensional nonconformities.

Notwithstanding any other provision of this chapter, where land within the city is occupied by one or more structures in compliance in all respects with this chapter, and part of such land is acquired by any governmental agency, and such acquisition causes the property in question to be in violation of one or more provisions of this chapter including, but not limited to, insufficient net lot area, insufficient off-street parking, excess percentage of coverage of the lot by the structure, insufficient minimum yards, insufficient green space or excessive height of the structure or structures shall not be treated as in violation of this chapter and may be used, structurally altered, reconstructed, repaired or enlarged to the same extent that such use, structural alteration, reconstruction, repair or enlargement would have been permissible under the provisions of this chapter had the acquisition by such public agency not taken place.

(Ord. No. O-3-71)

Sec. 24-17. Nonconforming uses of land.

Where, on March 22, 1965, or on the date of adoption of an amendment of this chapter, lawful use of land exists that is made no longer permissible under the terms of this chapter as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- (a) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied on March 22, 1965, or on the effective date of an amendment of this chapter.
- (b) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use on March 22, 1965, or on the effective date of an amendment of this chapter.
- (c) If any such nonconforming use of land ceases for any reason for a period of more than ninety days, any subsequent use of such land shall conform to the regulations specified by this chapter for the zone in which such land is located.

(Ord. No. O-2-65, art. 1, § 4)

Sec. 24-18. Nonconforming structures.

Where a lawful structure exists on March 22, 1965, or on the effective date of an amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions

on area, lot coverage, height, yards or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) No such structure may be enlarged or altered in a way which increases its nonconformity.
- (b) Should such structure be destroyed by any means to an extent of more than fifty (50) percent of its replacement cost at time of destruction as determined by the building inspector, it shall not be reconstructed except in conformity with the provisions of this chapter.
- (c) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zone in which it is located after it is moved.

(Ord. No. O-2-65, art. 1, § 4)

Sec. 24-19. Nonconforming use of structures.

If a lawful use of a structure or of a structure and premises in combination, exists on March 22, 1965, or on the effective date of an amendment of this chapter, that would not be allowed in the zone under the terms of this chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) No existing structure devoted to a use not permitted by this chapter in the zone in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the zone in which it is located.
- (b) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for use on March 22, 1965, or at the time of an amendment of this chapter, but no such use shall be extended to occupy any land outside such building.
- (c) If no structural alterations are made, any nonconforming use of a structure or structure and premises may be changed to another nonconforming use only upon a finding by the city council, after public hearing, that the change is required (i) to preserve a historic structure, or (ii) as part of the renewal, revitalization or restoration of a specific geographic area designated by the city council, or (iii) to prevent a confiscatory taking of the property. In permitting such change, the city council may require appropriate conditions and safeguards to protect and enhance the public welfare.
- (d) Any structure or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the zone in which such structure is located, and the nonconforming use may not thereafter be resumed.

- (e) When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six consecutive months or for eighteen months during any three-year period, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the zone in which it is located.
- (f) Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

(Ord. No. O-2-65, art. 1, § 4; Ord. No. O-18-82, § 1)

Sec. 24-20. Repairs and maintenance.

On any structure devoted in whole or in part to any nonconforming use, work may be done in any period of twelve consecutive months on ordinary repairs or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten percent of the current replacement value of the structure; provided, that the cubic content of the structure shall not be increased.

Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

(Ord. No. O-2-65, art. 1, § 4)

Sec. 24-21. Uses under exception provisions not nonconforming uses.

Any use for which a special exception is permitted as provided in this chapter shall not be deemed a nonconforming use, but shall, without further action, be deemed a conforming use in such zone.

(Ord. No. O-2-65, art. 1, § 4)

Sec. 24-21.1. Enlargement, relocation, replacement, repair or alteration of nonconforming structures.

Anything to the contrary in this chapter notwithstanding, the planning commission shall be authorized to permit any nonconforming structure, or any structure occupied by a nonconforming use, to be enlarged, relocated, replaced, repaired or structurally altered in any zone upon a finding by the commission that such work will not adversely affect the use or development of any other property, upon such conditions as the commission shall find necessary to avoid such adverse effect.

(Ord. No. O-07-78)

DIVISION 5. R-20 ZONE, MEDIUM DENSITY RESIDENTIAL

Sec. 24-55. Purpose of zone.

The R-20 Zone is intended to stabilize and protect medium density areas by reducing hazards to the living environment and to provide for a varied, denser urban residential pattern suitable to the needs of the population by encouraging a range of dwelling types.
(Ord. No. O-2-65, Art. 3, § 1)

Sec. 24-56. Uses permitted by right.

The following uses are permitted by right in the R-20 Zone:

- (1) All uses permitted in the R-T Zone.
- (2) Two family dwellings, multiple-family and multiple family condominium dwellings.
- (3) Boardinghouses and rooming houses.
- (4) Fraternity and sorority houses.
- (5) Accessory uses and structures, including but not limited to:
 - (a) Accessory uses and structures permitted in the R-90 Zone.
 - (b) Business office for the administration of multiple-family dwellings containing more than twenty-four (24) dwelling units.
 - (c) Swimming pools for the exclusive use of the residents of the dwelling or dwellings located on the same parcel or lot.
 - (d) Home based businesses authorized pursuant to Article X, Chapter 24 of this Code.
- (6) Child or elderly day care facilities in single-family detached dwelling units or duplexes accommodating not more than eight (8) individuals.
- (7) Towers, poles, antennas or other structures intended for use in connection with transmission or receipt of radio or television signals, or both, subject to the provisions of section 24-167A of this Code.
- (8) Bed and breakfast subject to the requirements contained in section 24-167B.
- (9) Public buildings and uses.
(Ord. No. O-2-65, Art. 3, § 1; Ord. No. O-1-73, § 2; Ord. No. O-1-76, § 1; Ord. No. O-1-79; Ord. No. O-5-80, § 2; Ord. No. O-20-87, 9-8-87; Ord. No. O-3-88, 3-24-88; Ord. No. O-5-93, 4-12-93; Ord. No. O-17-93, 11-15-93; Ord. No. O-1-96, 2-5-96; Ord. No. O-8-98, § 2, 8-3-98; Ord. No. O-13-02, 11-4-02)

(2) *Existing pawnshops regulation thereof.* Any pawnshops lawfully operating within the city as of the effective date of this section shall be subject to the following additional requirements and restrictions:

- (a) All existing pawnshops located within the city shall, by not later than September 1, 2001, be located only on property zoned I-3 and shall conform to the requirements of section 24-144 of this Code.
- (b) Any pawnshop not conforming to the requirements of section 24-167C(2)(a) above shall cease operations and shall not be a lawful nonconforming use.
- (c) Pawnshops in existence on land zoned other than in the I-3 Zone after the expiration of the period provided in section 24-167C(2)(a) above shall be subject to the enforcement procedures and penalties provided in section 24-184 of this Code.

(Ord. No. O-4-98, 4-6-98)

ARTICLE V. SITE DEVELOPMENT PLANS

Sec. 24-168. When required.

No building or structure shall be hereafter erected, moved, added to or structurally altered under circumstances which require the issuance of a building permit under this chapter, nor shall any use be established, altered or enlarged under circumstances which require the issuance of a use and occupancy permit under this chapter, upon any land, until a site development plan for the land upon which such building, structure or use is to be erected, moved, added to, altered, established or enlarged has been approved by the city planning commission. This requirement shall not apply to the use of any single-family dwelling for residential purposes.

Notwithstanding the foregoing, no site development plan shall be required to be submitted or approved where the city manager or his designee, upon reviewing an application for use and occupancy permit, is satisfied that the proposed use is a permitted use in the zone and is substantially similar to the use to which the premises were put by the last prior occupant thereof, and the property on which the use is proposed to be located has been the subject of a site development plan approved by the planning commission. A proposed use shall not be deemed substantially similar to a prior use where this chapter imposes more stringent requirements for the proposed new use as to off-street parking, yards, height limits or minimum lot size. Notwithstanding the foregoing, no site development plan shall be required to be submitted or approved where the city manager or his designee, upon reviewing an application for a building permit for changes in an existing building, is satisfied that the proposed changes in the building will not increase the exterior dimensions of the building or substantially increase the usable space within the building.

(Res. No. R-19-66; Ord. No. O-3-73; Ord. No. O-6-79, § 2; Ord. No. O-1-88, 1-4-88)

ARTICLE XI. OFF-STREET PARKING AND LOADING

Sec. 24-218. General requirements.

(a) There shall be provided, at the time of erection, enlargement or structural modification of any building or structure, off-street parking spaces, either within or without a structure with adequate provision for ingress and egress, in accordance with the requirements contained in this article. Except as otherwise provided, each parking space shall consist of a standard parking stall to be a minimum of nine (9) feet wide. Retail centers, offices and other uses, where a mix of short-term and long-term parking occurs, shall use the nine-foot wide standard stall. Provided, however, different stall widths may be required or permitted based upon the proposed use as follows:

(1) *High turnover stall* - for multi- or single-use buildings devoted primarily or exclusively to service or convenience uses including, but not limited to, Class B restaurants, banks and convenience stores must be ten (10) feet wide.

(2) *Low turnover stall* - for residential, employee and commuter parking areas where long-term parking generally occurs may be a minimum of eight and one-half (8 1/2) feet wide.

More than one type of stall may be used or required, based upon the use of the property, with the authorization of the city planning commission or its designee pursuant to section 24-218(f).

(b) For any building or part thereof used for commercial, industrial, hospital or institutional purposes, adequate off-street parking space for loading and unloading shall be provided in such amount and at such locations as required by the planning commission at the time of site development plan approval, considering the size and proposed use of the building. Such space shall be in addition to other requirements contained in section 24-219.

(c) No required parking area or loading space shall be used or permitted to be used for the sale, repair, dismantling or servicing of any vehicle, equipment, materials or supplies.

(d) Parking spaces as required in this article shall be on the same lot with the main building or structure, or for buildings other than dwellings, located not more than three hundred (300) feet therefrom. Any parking space shown on a site development plan heretofore or hereafter approved by the planning commission which abuts the side or rear lot line, or faces the front of a lot in a residential zone, shall be screened from such lot by an earth berm, planting, a fence, a solid wall or a combination of two (2) or more of the foregoing as specified by the planning commission in approval of the site development plan.

(e) All off-street parking facilities, except those for single-family detached use, shall consist of modules which comprise a drive aisle and one or two (2) rows of parking spaces as shown in Figure A below and consistent with the following standards:

(1) One-way module - shall be composed of a linear area at least fifty-five (55) feet wide to accommodate two (2) rows of angled parking and a single, one-way aisle.

Two-way module - shall be composed of a linear area at least sixty (60) feet wide to accommodate two (2) rows of angled or perpendicular parking and two-way aisles.

Single-loaded module - where only one (1) row of parking is provided, the module width in each of the above cases may be reduced by seventeen (17) feet.

(2) Each edge of a perpendicular or angled parking stall shall be defined by double parallel lines spaced to provide a clear area of twelve (12) inches between lines. Each

stall shall be seventeen (17) feet in length.

(3) Angled stalls are defined as those stalls where the angle between the center line of the parking stall and the center line of the driveway serving it does not exceed seventy-five (75) degrees. Parallel stalls are defined as those stalls that are parallel to the drive aisle serving the stall. Perpendicular stalls are defined as those stalls where the angle between the center line of the parking stall and the center line of the driveway serving it is ninety (90) degrees. All entry and exit portions of driveways connecting to public streets shall be consistent with section 19-15(e) of this Code.

(f) If any parking area consisting of spaces ten (10) feet wide or wider shall hereafter be redesigned to provide parking spaces less than ten (10) feet wide pursuant to this section, the new design shall be first approved by the planning commission.

(g) All required parking spaces, access and circulation drives shall have a paved surface in accordance with the requirements of this article. All off-street parking, loading and storage areas must be striped in a visible color. The planning commission, in addition, may require in its approval of the site development plans, directional arrows and traffic signs on site as necessary for site traffic control.

(h) All driveways constructed after the effective date of this ordinance, in connection with single-family residential dwellings, with the exception of those dwellings zoned MXD, shall meet the following requirements:

(1) The minimum length of a driveway shall be twenty (20) feet. The minimum length of a driveway serving a garage or carport shall be twenty-four (24) feet, measured from the garage or carport to the property line or the back of the sidewalk, whichever is closer to the garage.

(2) The maximum slope of any residential driveway shall be ten (10) percent where the driveway serves a garage or carport and six (6) percent where the driveway is used as the required off-street parking. A waiver of this requirement can be granted by the director of public works and engineering.

(3) Paving requirements for residential driveways shall comply with section 24-220(b).

(i) No off-street parking lot, area or facility shall be reduced in area or encroached upon by buildings, structures or vehicular storage or any other use where such reduction or encroachment will reduce the area below that required by this article.

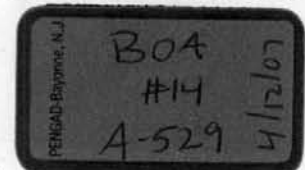
(j) Notwithstanding any other provision to the contrary contained in this chapter, the requirements of this article may be waived in whole or part by the city council for any proposed original or new use or reuse of a building, structure, premises or lot located within the Olde Towne District as defined in section 24-161 or for any lot upon which there exists a structure designated by the historic district commission as a historic resource. The waiver applicable herein may be granted upon the application of the owner or occupant and only upon a finding by the city council, after public hearing, that such waiver would not be detrimental to the public health, safety or general welfare and that such parking cannot reasonably be provided on-site. The city council may attach such conditions or safeguards to protect and enhance the public welfare as it may deem necessary. Any waiver granted hereunder shall expire with any subsequent change in use or reuse of the building, structure, premises or lot. No waiver granted hereunder shall affect the authority of the city council to create a parking lot district and apply the requirements and standards relating to such district, including, but not limited to, the assessment or taking of properties to which a waiver applies.

(Ord. No. O-13-80; Ord. No. O-18-82, § 5; Ord. No. O-16-86, § 1, 12-8-86; Ord. No. O-1-90, 1-2-90; Ord. No. O-6-93, 4-19-93)

LIST OF ADJOINING AND CONFRONTING PROPERTY OWNERS

RST DEVELOPMENT 70 WEST DEER PARK ROAD

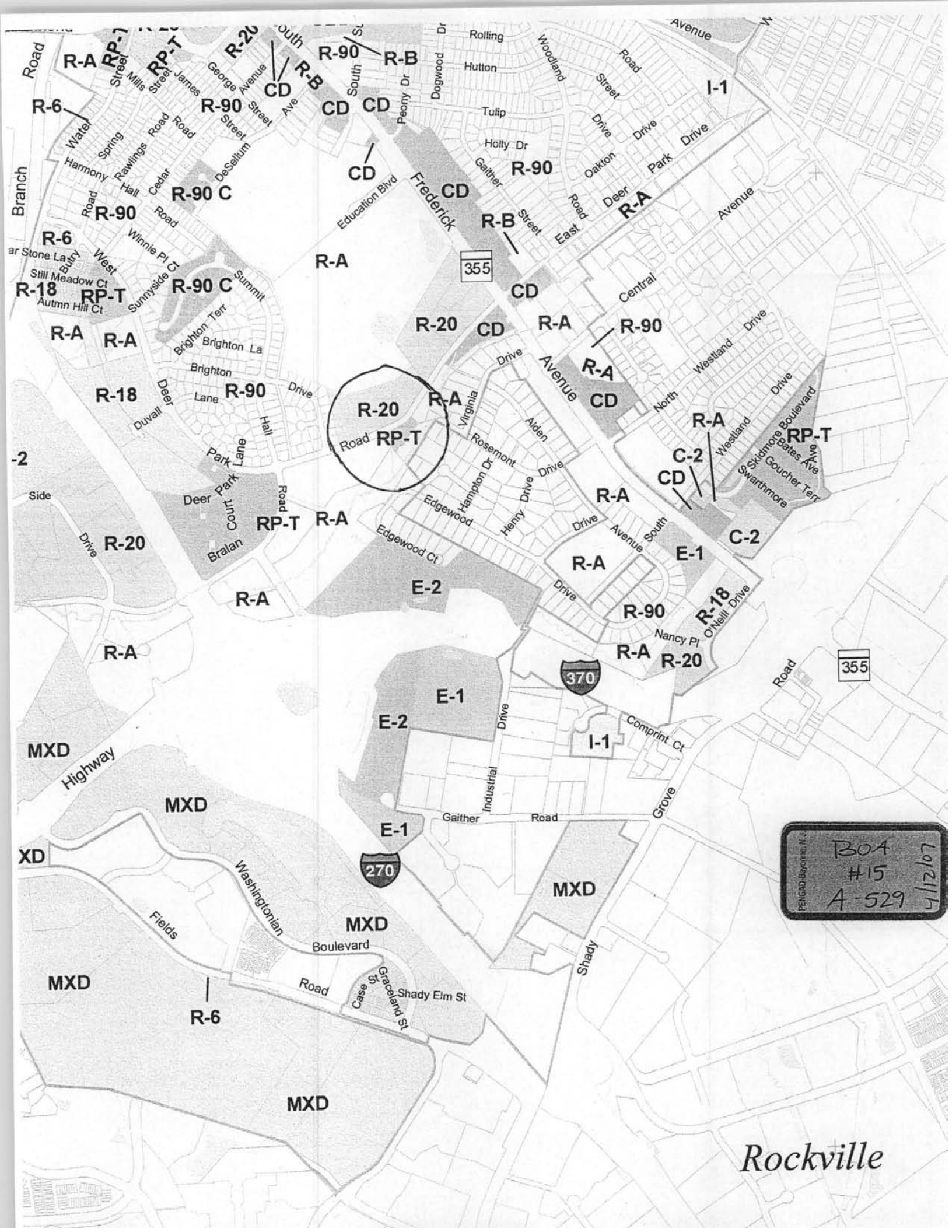
NAME	ADDRESS (Please add Zip Code)	LOT PARCEL	BLOCK	ACCOUNT #
Tomasz Gebala, Et Al	18019 Barley Corn Way Germantown, MD 20874	22	D	09-00840348
Herman Coleman, Jr.	4 Brighton Court Gaithersburg, MD 20877	21	D	09-00840337
Martha L. Hale	6 Brighton Court Gaithersburg, MD 20877	20	D	09-00840326
Maximo A. & Sofia Ramos	8 Brighton Court Gaithersburg, MD 20877	19	D	09-00840315
Matthew & C. Hudson	10 Brighton Court Gaithersburg, MD 20877	18	D	09-00840304
Susan E. Perper-Nicholson	12 Brighton Court Gaithersburg, MD 20877	17	D	09-00840292
Luciano & Carmen Vargas	14 Brighton Lane Gaithersburg, MD 20877	16	D	09-00840281
Moises Martinez Noemi Suero Melgar	30 Brighton Drive Gaithersburg, MD 20877	19	C	09-00840144
Andres A. Cruz, Et. Al	32 Brighton Drive Gaithersburg, MD 20877	20	C	09-00840155
Fernado & Vilma Mejia	34 Brighton Drive Gaithersburg, MD 20877	21	C	09-00840166
Robert C. Jee	35 Brighton Drive Gaithersburg, MD 20877	14	D	09-00840268
James D. & M. O'Connor	36 Brighton Drive Gaithersburg, MD 20877	22	C	09-00840177



NAME	ADDRESS (Please add Zip Code)	LOT PARCEL	BLOCK	ACCOUNT #
Mary M. & Cary A. Bloom	37 Brighton Drive Gaithersburg, MD 20877	15	D	09-00840270
Robert O. & Ou Rodriguez	38 Brighton Drive Gaithersburg, MD 20877	23	C	09-00840188
Kevin M. & Bernadette Ginley	40 Brighton Drive Gaithersburg, MD 20877	24	C	09-00840190
Jorge & M. C. Cabezas	42 Brighton Drive Gaithersburg, MD 20877	25	C	09-00840202
Jose R. & Marta A. Mancia	43 Brighton Drive Gaithersburg, MD 20877	23	D	09-00840350
Salvador & Dinora M. Rosales	44 Brighton Drive Gaithersburg, MD 20877	26	C	09-00840213
Robert S. & B.J. Conward	46 Brighton Drive Gaithersburg, MD 20877	27	C	09-00840224
Fairfield Broadstone LP	5510 Morehouse Drive Suite 200 San Diego, CA 92121	N939		09-00842770
Eugene B. Casey Found Trust	c/o Casey Mangt Inc. 800 S. Frederick Ave Suite 100 Gaithersburg, MD 20877	17		09-01470021
City of Gaithersburg	31 S. Summit Avenue Gaithersburg, MD 20877	P959		09-00777441
Steven R. Putnam	14 Virginia Drive Gaithersburg, MD 20877	5	B	09-00842633
John A. Arnold Dorothy Reitwiesner	16 Virginia Drive Gaithersburg, MD 209877	4	B	09-00842622
Francois D. & M.J. Martzloff	18 Virginia Drive Gaithersburg, MD 20877	3	B	09-00842848

NAME	ADDRESS (Please add Zip Code)	LOT PARCEL	BLOCK	ACCOUNT #
Board of Education	850 Hungerford Drive Rockville, MD 20850	P389		09-00817968
City of Gaithersburg	31 S. Summit Avenue Gaithersburg, MD 20877	P196		09-00818165
Engineering Tech Services Corporation	200 Manor Circle Takoma Park, MD 20912	P183		09-00819502
City of Gaithersburg	31 S. Summit Avenue Gaithersburg, MD 20877	P197		09-00821620
City of Gaithersburg	31 S. Summit Avenue Gaithersburg, MD 20877	P7	G	09-00842666
Francois D. & M.J. Martzloff	18 Virginia Drive Gaithersburg, MD 20877	2	B	09-00842837
City of Gaithersburg	31 S. Summit Avenue Gaithersburg, MD 20877	P130		09-01584765

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Rockville



March 22, 2007

Ms. Ashby Tanner
Law Section
The Gaithersburg Gazette
P.O. Box 6006
Gaithersburg, MD 20884

Dear Ashby:

Please publish the following legal advertisement in your March 28, 2007 issue of the *Gaithersburg Gazette*.

Sincerely,

Caroline Seiden
Planner

chs

ASSIGN CODE: PHA-529/Acc.#133649

NOTICE OF ADMINISTRATIVE REVIEW

The Board of Appeals of the City of Gaithersburg will hold an administrative review on A-529, filed by RST Development, LLC, on

THURSDAY
APRIL 12, 2007
AT 7:30 P.M.

or as soon thereafter as it may be heard in the Council Chambers at City Hall, 31 South Summit Avenue, Gaithersburg, Maryland. In accordance with Chapter 24, Article VII, Section 24-187 through 188 of the City Code, the applicant has requested an Administrative Review of a determination by City requiring site plan amendment approval and renewal of a license to rent prior to the reoccupation of existing dwellings at West Deer Park Apartments, 70 West Deer Park Road, Parcel A, Gaithersburg, Maryland. This administrative review will be heard simultaneously with administrative review A-528, also filed by RST Development, LLC.

Further information may be obtained from the Department of Planning and Code Administration at City Hall, 31 South Summit Avenue, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

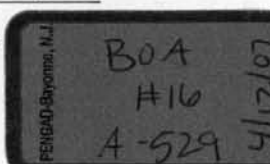
Caroline Seiden
Planner

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2098
301-258-6300 • FAX 301-948-6149 • TTY 301-258-6430 • cityhall@gaitersburgmd.gov • www.gaitersburgmd.gov

MAYOR
Sidney A. Katz

COUNCIL MEMBERS
Stanley J. Alster
Geraldine E. Edens
Henry F. Marraffa, Jr.
John B. Schlichting
Michael A. Sesma

CITY MANAGER
David B. Humpton



CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland 20877
Telephone: 301-258-6330

**BOARD OF APPEALS
NOTICE OF ADMINISTRATIVE REVIEW**

In accordance with Section 24-187 through 190 of the City of Gaithersburg Zoning Ordinance, the City of Gaithersburg Board of Appeals will conduct Administrative Reviews as noted below.

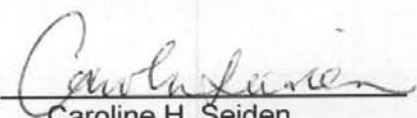
Application Type: **ADMINISTRATIVE REVIEW**
File Numbers: **A-528 and A-529**
Location: **70 WEST DEER PARK ROAD**
Petitioner: **RST DEVELOPMENT, LLC**
Day/ Date/Time: **THURSDAY, APRIL 12, 2007, 7:30 P.M.**
Place: **COUNCIL CHAMBERS
31 SOUTH SUMMIT AVENUE**

The applications request an Administrative Review of a determination by City staff refusing to issue a renewal of a rental housing license and requiring a site plan amendment approval from the Planning Commission prior to the reoccupation of existing dwellings at West Deer Park Apartments, 70 West Deer Park Road, Parcel A, Gaithersburg, Maryland. Administrative Reviews A-528 and A-529 will be consolidated and heard simultaneously.

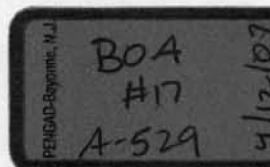
As per Section 2.4(b) of the Board of Appeals Rules of Procedure, persons or associations intending to appear in opposition to a petition whether or not represented by counsel, must file a prehearing statement no later than seven (7) days prior to the date of the hearing. Nothing in this section should be construed to limit the rights of individual members of the public to submit testimony during the hearing or to submit pertinent written materials at any time while the record remains open. However, please note Section 2.4(d) relating to the Board's authority to prohibit the testimony of a party's witness not identified due to the failure to comply with Section 2.4(a) and/or (b).

Further information may be obtained from the Department of Planning and Code Administration at City Hall, 31 South Summit Avenue, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

CITY OF GAITHERSBURG

By: 
Caroline H. Seiden
Planner

(over)



NOTICES SENT THIS 28TH DAY OF MARCH, 2007 TO:

PETITIONER :

RST Development, LLC, 6001 Montrose Road, Suite 710, Rockville, MD 20852

INTERESTED PARTIES AND PROPERTY OWNERS WITHIN 200 FEET OF SUBJECT PROPERTY:

(A complete list of property owners notified is available in the Planning and Code Administration.)

CITY STAFF:

Dave Humpton, City Manager
Cathy Borten, City Attorney
Britta Monaco, Public Information Office
Doris Stokes, City Manager's Office
Greg Ossont, Director of Planning &
Code Administration
Trudy Schwarz, Community Planning Dir.
Jeff Baldwin, City Web Administrator (via email)

BOARD OF APPEALS MEMBERS:

Harvey Kaye, Chairperson
Richard Knoebel, Vice Chairperson
Gary Trojak
Victor Macdonald
Carol Rieg
David Friend, Alternate
William Chen, Attorney for the Board of Appeals

PLANNING COMMISSION

A-528/A-529 – 70 West Deer Park Road



BOARD OF EDUCATION
850 HUNGERFORD DR
ROCKVILLE MD 20850

CAROLINE HUDSON
10 BRIGHTON COURT
GAITHERSBURG MD 20877

DAVID PODOLSKY
ATTORNEY AT LAW
25 W. MIDDLE LANE
ROCKVILLE MD 20850

ENGINEERING TECH SERVICES CORP
200 MANOR CIR
TAKOMA PARK MD 20912

EUGENE B FOUNDTRUSTUST CASEY
C/O CASEY MANGT INC
800 S FREDERICK AVE STE 100
GAITHERSBURG MD 20877

FAIRFIELD BROADSTONE LP
5510 MOREHOUSE DR STE 200
SAN DIEGO CA 92121

FERNADO & VILMA MEJIA
34 BRIGHTON DR
GAITHERSBURG MD 20877

FRANCOIS D & M J MARTZLOFF
18 VIRGINIA DRIVE
GAITHERSBURG MD 20877

JAMES D & M O'CONNOR
36 BRIGHTON DR
GAITHERSBURG MD 20877

JOHN A ARNOLD
DOROTHY REITWIESNER
16 VIRGINIA DR
GAITHERSBURG MD 20877

JORGE & M C CABEZAS
42 BRIGHTON DR
GAITHERSBURG MD 20877

JOSE R & MARTA A MANCIA
43 BRIGHTON DR
GAITHERSBURG MD 20877

JOSE W ROMERO
32 BRIGHTON DR
GAITHERSBURG MD 20877

KEVIN M & BERNADETTE GINLEY
40 BRIGHTON DR
GAITHERSBURG MD 20877

LUCIANO & CARMEN VARGAS
14 BRIGHTON LN
GAITHERSBURG MD 20877

MARY M & CARY A BLOOM
37 BRIGHTON DR
GAITHERSBURG MD 20877

MOISES MARTINEZ
NOEMI SUERO MELGAR
30 BRIGHTON DR
GAITHERSBURG MD 20877

ROBERT C JEE
35 BRIGHTON DR
GAITHERSBURG MD 20877

ROBERT O & O U RODRIGUEZ
38 BRIGHTON DR
GAITHERSBURG MD 20877

ROBERT R. HARRIS, ESQ.
HOLLAND & KNIGHT, LLP
3 BETHESDA METRO CENTER
SUITE 800
BETHESDA MD 20814

ROBERT S & B J CONWARD
46 BRIGHTON DRIVE
GAITHERSBURG MD 20877

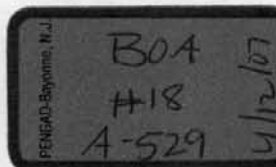
SALVADOR & DINORA M ROSALES
44 BRIGHTON DR
GAITHERSBURG MD 20877

SCOTT COPELAND
RST DEVELOPMENT, LLC
6001 MONTROSE ROAD
SUITE 710
ROCKVILLE MD 20852

TOMASZ GEBALA
18019 BARLEYCORN WAY
GERMANTOWN MD 20874

WDP-RST LLC
6001 MONTROSE RD STE 1001
ROCKVILLE MD 20852

WILLIAM J. CHEN, ESQ.
CHEN, WALSH, TECLER & MCCABE, LLP
200A MONROE STREET
SUITE 300
ROCKVILLE MD 20850



BEFORE THE BOARD OF APPEALS FOR THE CITY OF GAITHERSBURG

IN THE MATTER OF
Petitioner WDP-RST LLC
(WEST DEER PARK APARTMENTS)

Administrative Review
Application Case A-529

PRE-HEARING STATEMENT

Pursuant to Section 2.4 of the City of Gaithersburg Board of Appeals Rules of Procedure, the Petitioner, WDP-RST LLC ("Petitioner"), by its undersigned counsel hereby submits the following pre-hearing statement for its appeal, submitted March 2, 2007:

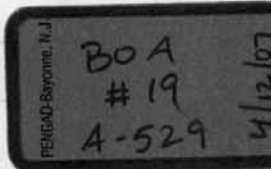
(1) Statement of the grounds upon which Petition is based.

The Petitioner seeks reversal of the February 22, 2007 decision of Planning and Code Administration Director Greg Ossant of the City of Gaithersburg (the "City") to (1) require site plan approval prior to Petitioner's reoccupation of its multifamily apartment project and (2) refuse to issue a renewal of Petitioner's Rental Housing License for the same multifamily apartment project. The written decision is embodied in a letter to Petitioner, which states in relevant part:

The multi-family use of the property has been vacant and discontinued for more than ninety (90) days. In accordance with the City of Gaithersburg Zoning Ordinance, depending upon what your client proposes for the project, your client will be required to file either an amendment to the current multi-family use site plan or an entirely new site plan. In either case, the site plan application should include those items listed in Section 24-169 of the Zoning Ordinance. A checklist of required items is included herein for reference. I refer you generally to Sections 24-17, 24-169, 24-170, 24-171 and 24-172 of the Zoning Ordinance. Also depending on what your client proposes, an application for a parking waiver might be necessary.

* * * *

Please note that the City received your client's application for a renewal of its rental housing license within the time frame provided in Sec. 18AA-6 of the City Code. In accordance with the provisions of Secs. 18AA-5 and 6, the City subsequently conducted an inspection of the property.



Violations of the Code were found; the property was found to be vacant, boarded up, and without utility service. Because an appeal related to the property was pending before the Board of Appeals, the City was not able to determine when the violations could be addressed. Therefore, the renewal was not issued at the time.

See Exh. 1. For the reasons set forth further herein, the City clearly erred in reaching its decision.

Petitioner is the owner of certain land and improvements located at 70 West Deer Park Road, Gaithersburg, Maryland and known as West Deer Park Apartments (the "Apartment Project"). The Apartment Project is classified in the R-20 zone (medium density residential) and is developed with multi-family residential buildings that contain 198 dwelling units. These units have been operated as rental apartments since their construction in 1973.

Petitioner purchased the Apartment Project in 2005 and obtained Site Development Approval from the Planning Commission for the redevelopment of the Apartment Project with 130 townhouse units on January 4, 2006. The tenants of the Apartment Project were relocated to facilitate the redevelopment of Apartment Project for townhouses. However, significant declines in the residential housing market and increases in the costs of construction have adversely impacted such proposed redevelopment and therefore Petitioner decided not to proceed with the redevelopment. Instead, Petitioner decided to renovate the existing structures and to continue to operate the Apartment Project as rental apartments in accordance with an existing use and occupancy permit and a then existing rental license. The renovation work Petitioner plans to perform includes the installation of new cabinets, carpeting and other improvements, but does not involve any structural modifications, changes in the overall number of dwelling units, or increases in the exterior dimensions of, or usable space within, the existing buildings.

Petitioner discussed its proposed renovations of the Apartment Project with City Staff, and City Staff initially agreed with Petitioner that Petitioner would not be required to obtain any approvals from the City to renovate the Apartment Project and continue its operation and occupation as rental apartments. Petitioner made preliminary arrangements to commence the planned renovation of the Apartment Project, but before Petitioner could commence the work, City Staff advised Petitioner that the City might take the position some sort of City approval would be required before Petitioner could reoccupy the Apartment Project with tenants. Subsequently, in a meeting that included outside counsel to the City and counsel to Petitioner, outside counsel to the City expressed his belief that Petitioner would need to obtain approval of a site development plan amendment before the Apartment Project could be reoccupied. The City's counsel stated that the basis for this belief was his view that the existing Apartment Project constituted a non-conforming use by virtue of the fact that the number of parking spaces for tenants was slightly less than the number of spaces that would be required under the current City Zoning Code if the existing structures were built today.

On February 22, 2007, the City informed Petitioner via letter that site development plan approval was needed prior to reoccupation of the existing dwellings at the Apartment Project. The letter cited to Section 24-17 of the Gaithersburg Code, and suggested that site development approval was needed because The Apartment Project was "vacant and discontinued for more than ninety (days). . . [and] an application for a parking waiver might be necessary." See Exh. 1; see also Gaithersburg Code § 24-17(stating that "[i]f any such nonconforming use of land ceases for any reason for a period of more than ninety days, any subsequent use of such land shall conform to the regulations specified by this chapter for the zone in which such land is located.")

The Rental Housing License for the Apartment Project, which was issued to the prior owner of the Apartment Project and in force when Petitioner acquired the property, was set to expire on January 31, 2007. See Exh. 2. Petitioner filed the appropriate papers, along with a check in the amount of \$19,800, to obtain issuance of a new Rental Housing License. See Exh. 3. The City never returned the \$19,800 check Petitioner sent in connection with the renewal license, but it has not issued a Rental Housing license.

Subsequently, on February 22, 2007, within the same letter setting forth the City's decision that site plan approval would be required, the City articulated its reasoning in writing for not renewing Petitioner's Rental Housing License as: "Violations of the Code were found; the property was found to be vacant, boarded up, and without utility service. Because an appeal related to the property was pending before the Board of Appeals, the City was not able to determine when the violations could be addressed." See Exh. 1.

Petitioner was never provided written notice of a specific violation preventing its license renewal, or with a timeframe in which to cure any alleged violation, as required under the Code. Moreover, the Apartment Project is vacant because the City will not allow re-occupancy. It is boarded up as required by the City to prevent vandalism, and, contrary to the representation in the letter, the Apartment Project does have utility service. Petitioner has yet to be informed of what precise violation is to be cured and a time period in which the cure is to occur.

(2) Discussion and Arguments

The Board of Appeals may grant a petition for administrative review seeking reversal of an administrative decision when it "finds from the evidence of record that the final order, requirement, decision or determination which is the subject of the appeal was clearly erroneous or not in accordance with the law." Gaithersburg Code § 24-189(a); see Mortimer v. Howard

Research and Development Corp., 83 Md. App. 432, 442-43 (Md. 1990) (setting forth standard for review of a County planning board of appeals). The City's February 22, 2007 decision is not in accordance with the established law of the City of Gaithersburg, as set forth in Chapter 24 and Chapter 18AA of the City of Gaithersburg Municipal Code (the "Code"). The law makes clear that Petitioner is not required to get site plan approval prior to reoccupation of the Apartment Project and that Petitioner is entitled to renewal of its Rental Housing License.

Site Development Plan Approval Is Not Required

The City clearly erred by finding site development plan approval is required for Petitioner to re-occupy and use the Apartment Project for rental of the individual apartments to residential tenants. Section 24-168 of the Code requires site development plan approval only in circumstances where a building or structure is being "erected, moved, added to or structurally altered." The proposed renovation work on the Apartment Project does not involve any enlargement, increase, movement or structural alteration of the existing buildings. Petitioner is simply proposing to renovate the existing structures. Therefore, pursuant to Section 24-168, site plan approval is not required.

Moreover, even if site development plan approval might otherwise be required (which it is not), the second paragraph of Section 24-168 of the Code specifically provides that no site development plan approval is required where "the proposed use is a permitted use in the zone and is substantially similar to the use to which the premises were put by the prior occupant thereof, and the property on which the use is proposed to be located has been the subject of a site development plan approved by the planning commission." In this case, the proposed re-occupation and use of the Apartment Project for rental of the individual apartments to residential tenants -- multi-family use -- is permitted as a matter of right under the standards of the R-20

zone. See Code § 24-56. It is exactly the same as the use for which the prior occupant of the Apartment Project used the premises, and it has already been the subject of a site development plan approved by the planning commission. See Exhs. 4 & 5. Accordingly, as a matter of law, site development plan approval is not required.

The City also erred in its determination that Petitioner's proposed reoccupation and rental of the Apartment Project is a non-conforming use by virtue of the number of parking spaces located at the Apartment Project being less than the number that would be required if the Apartment Project were built today. Contrary to the City's assertions, the specific number of parking spaces is not relevant to the determination of whether the proposed multi-family use of the Apartment Project is a "non-conforming" use. The Code defines "use" as the "principal purpose for which a lot or main building thereon is designed, arranged or intended and for which it is or may be used, occupied or maintained." See Code § 24-1. In this case, the "use" of the Apartment Project, *i.e.*, its principal purpose, is multi-family residential. Multi-family residential uses and accessory uses, such as off-street parking, are permitted as a matter of right. See Code § 24-56. Rental apartment uses have always been, and continue to be, permitted on the Apartment Project under the standards of the R-20 zone. Therefore, the continued use of the Apartment Project for multi-family residential uses is not a non-conforming use.

Moreover, it is clear that the Apartment Project meets the parking requirements of the Code. Under the Code, the number of parking spaces required for a multi-family housing project is determined at the time the residential buildings are erected, enlarged or structurally modified. See Code § 24-218. There is no requirement that an owner of property constructed in accordance with the applicable parking requirements must add additional parking spaces if the Code is later amended so as to require additional parking for new construction, even if the

property is subsequently vacated for a period of time. In this case, it is undisputed that the Apartment Project contains the number of parking spaces that were required under the Code at the time the Apartment Project was erected. It is also undisputed that Petitioner's planned renovations do not include an enlargement or structural modification of the Apartment Project. Therefore, under the express language of the Code, the Apartment Project meets the parking requirements.

The City has advanced no other reason to support its decision for why the Apartment Project is a non-conforming, or otherwise requires site plan approval. The Board should therefore reverse the February 22, 2007 decision and issue a ruling that Petitioner is not required to submit a site development plan or site development plan amendment, or obtain any other approvals of the City in order to re-occupy and use the Apartment Project for multi-family residential housing.

Petitioner Is Entitled To Issuance of a Rental Housing License

The City clearly erred in its decision not to renew Petitioner's rental housing license. As soon as practicable after receipt of Petitioner's application and the required fee, the city manager is required to schedule an inspection of the Apartment Project. See Code § 18AA-5. If the inspection discloses a violation, the city manager is required to notify the owner in writing of the nature of the violation and the time within which such correction shall be accomplished. See Code § 18AA-5. The city manager is required to reinspect following corrective action, and to issue a final license after a reinspection evidencing a corrected violation.

If an inspection of the Apartment Project revealed a violation that needed to be cured, the City was required to notify Petitioner of the specific violation, and of the time to cure such violation, in writing so that Petitioner could cure the violation. The City failed to do so. It was

not until the February 22, 2007 letter that Petitioner was even made aware that an inspection was conducted in connection with renewal of its rental housing license. To date, Petitioner is still unaware of when this inspection took place.

Moreover, the February 22, 2007 letter points to no specific violation of any applicable law, ordinance or regulation as required under Section 18AA-8. It merely states that "[v]iolations of the Code were found" and the property was found "to be vacant, boarded up and without utility service." The City's February 22, 2007 letter failed to place Petitioner on notice of which law, ordinance, or regulation serves as the basis for the City's failure to issue a license. Petitioner has yet to be informed of what precise violation is to be cured and a time period in which the cure is to occur. More importantly, the conditions asserted by the City do not constitute any violation and are a direct result of the actions taken by the City. For example, the City initially refused to inspect the electrical work performed by Petitioner as a prerequisite for restoring power to the Apartment Project, thereby preventing the restoration of electrical power to the Apartment Project. It was not until after numerous requests and threats by Petitioner that the City agreed to conduct the necessary inspection. Now, the Apartment Project does have utility service. The Apartment Project's temporary vacancy is also caused by the City. The Apartment Project is vacant because the City has refused to issue a rental housing license based on the absurd position that the proposed multi-family use is a non-conforming use. The Apartment Project is boarded up to prevent vandalism, *at the request of the City*. The "conditions" alleged by the City are not violations of Code that justify the City's refusal to issue an rental housing license, and it is clear that the City has failed to comply procedurally with its obligations under Chapter 18AA. Petitioner is therefore entitled to have its rental license renewed.

(3) Copies of reports, studies, documents and plans to be introduced at the hearing:

1. February 22, 2007 letter from Planning and Code Administration Director (Exh.1)
2. RST Rental Housing License (Exh. 2)
3. RST Rental Housing License Application for Renewal and fee (Exh. 3)
4. Site Plan Approval Letter (Exh. 4)
5. Approved Site Plan (Exh. 5)

(4) Summary of Expert Testimony

See Attached Exh 6.

(5) Identity of Witnesses who will testify

Scott Copeland

Robert G. Brewer, Jr.

(6) Estimated time for presentation

One (1) hour to one and a half (1 1/2) hours for direct presentation

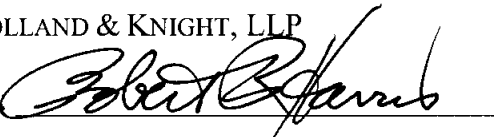
(7) Request for Relief

Petitioner respectfully requests that the Board of Appeals find that the City's decision was clearly erroneous and not in accordance with the law. In particular, Petitioner requests that the Board of Appeals reverse the determination of the City that Petitioner is required to obtain site plan approval prior to reoccupation of the property. Petitioner further requests that the Board of Appeals order the city manager to issue a Rental Housing License to Petitioner for the Apartment Project.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By

A handwritten signature in black ink, appearing to read "Robert R. Harris", written over a horizontal line.

Robert R. Harris, Esq.
Holland & Knight, LLP
3 Bethesda Metro Center
Suite 800
Bethesda, MD 20814

Stephen A. Bogorad, Esq.
Holland & Knight, LLP
2099 Pennsylvania Avenue, N.W.
Suite 101
Washington, DC 20006

Date: March 26, 2007

4417431_v2



February 22, 2007

Mr. Robert Harris
Holland and Knight, LLP
3 Bethesda Metro Center, Suite 800
Bethesda, Maryland 20814-6337

RE: West Deer Park Apartments – 70 West Deer Park Road

Dear Mr. Harris:

On behalf of your client, RST Development, the applicant in the above referenced matter, you have made several inquiries into various issues related to the above referenced property. This letter will address each of those inquiries.

Process Required for Reoccupation

You have inquired into what process would be required for your client to move forward with plans to reoccupy the 198 unit West Deer Park apartments for rent, rather than proceed with the 130 unit townhouse project that received final site plan approval on January 4, 2006.

The multi-family use of the property has been vacant and discontinued for more than ninety (90) days. In accordance with the City of Gaithersburg Zoning Ordinance, depending upon what your client proposes for the project, your client will be required to file either an amendment to the current multi-family use site plan or an entirely new site plan. In either case, the site plan application should include those items listed in Section 24-169 of the Zoning Ordinance. A checklist of required items is included herein for reference. I refer you generally to Sections 24-17, 24-169, 24-170, 24-171 and 24-172 of the Zoning Ordinance. Also depending on what your client proposes, an application for a parking waiver might be necessary.

Please note that, if it is your client's position that certain items which are otherwise required are either not warranted or required to be submitted with the amendment or new site plan in this matter, please indicate accordingly as part of the application. In keeping with City procedure, upon review of all materials submitted I will determine whether the application as submitted is complete without the inclusion of those items. If the application is not considered complete, I will contact you to discuss the omitted items.

Letter of February 2, 2007

In your letter of February 2, 2007, you raised certain issues regarding the issuance of a rental housing license and electrical permit for the subject property. In addition, on behalf of your client you have filed a petition for administrative review from what you believe to be a final decision on the rental housing license question. The following is provided in answer to those inquiries.

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2098
301-258-6300 • FAX 301-948-6149 • TTY 301-258-6430 • cityhall@gaitthersburgmd.gov • www.gaitthersburgmd.gov

MAYOR
Sidney A. Katz

COUNCIL MEMBERS
Stanley J. Alster
Geraldine E. Edens
Henry F. Marraffa, Jr.
John B. Schlichting
Michael A. Sesma

CITY MANAGER
David B. Humphrey

EXHIBIT

1

BOA
#20
A-529
4/12/07

Mr. Harris
February 22, 2007
Page 2

Rental Housing License

You have asked whether the City's decision not to renew or issue the rental license for the referenced property, as conveyed by Mr. Kevin Roman, Neighborhood Services Director, is the "official, final decision of the City." Please note that my understanding of Mr. Roman's conversation with RST's representative on that issue and what is stated in your letter seem to be substantially different. Therefore, the information conveyed by Mr. Roman is not the "official, final decision of the City."

Please note that the City received your client's application for a renewal of its rental housing license within the time frame provided in Sec. 18AA-6 of the City Code. In accordance with the provisions of Secs. 18AA-5 and 6, the City subsequently conducted an inspection of the property. Violations of the Code were found; the property was found to be vacant, boarded up, and without utility service. Because an appeal related to the property was pending before the Board of Appeals, the City was not able to determine when the violations could be addressed. Therefore, the renewal was not issued at that time.

Electrical Permit

As I noted in a follow-up telephone conversation to you on February 5th, the electrical permit issue has been resolved. The permit was issued by our offices, work completed and final inspection approved on February 7, 2007.

Right of Appeal

Under Section 24-187 of the Zoning Ordinance you have the right to appeal an alleged error in any final order, requirement, decision or determination made by an administrative official or department of the city government to the Board of Appeals (see also Section 18AA-11 of the Code). You have seventeen (17) days from the date of the action from which the appeal is taken to file your petition for administrative review.

I hope this information is helpful. Should you have any questions, please contact me at 301-258-6330.

Sincerely,



Greg Ossont, Director
Planning and Code Administration

Enclosure

cc: D. Humpton
F. Felton
K. Roman
C. Borten

RENTAL HOUSING LICENSE
CITY OF GAITHERSBURGTHIS IS TO CERTIFY THAT West Deer Park Apartments HAS BEEN ISSUED A**FINAL**
LICENSE FOR A

- ☒ Multiple Family Dwelling
☐ Single Family Dwelling, Condominium or Townhouse
☐ Hotel/Motel
☐ Room(s)

ADDRESS: 72-A West Deer Park Road

Pursuant to provisions of Chapter 18AA, Laws of Gaithersburg entitled, "Licensing of Rental Housing" license is hereby given to the above named to operate premises described above for a period of two years. This license shall be subject to suspension or revocation upon failure of licensee to maintain the premises in accordance with the Laws of Gaithersburg throughout the period of the license.

DATE ISSUED:

EXPIRES

UNITS 198

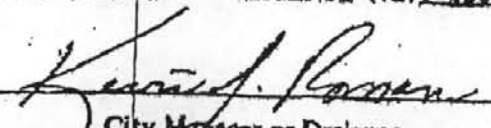
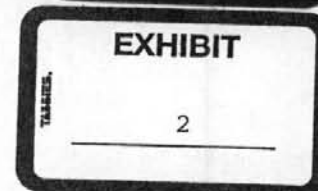
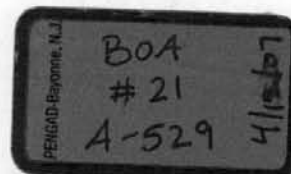
TEMPORARY

FEE PAID \$19,800.00

FINAL

1/28/051/31/07LICENSE NO. 00128

BY


City Manager or Designee

P&CA

PLANNING AND CODE ADMINISTRATION

City of Gaithersburg • 31 South Summit Avenue • Gaithersburg, Maryland 20877 • Telephone: (301) 258-6330 • Fax: (301) 258-6336
plancode@galthersburgmd.gov • www.galthersburgmd.gov



NEIGHBORHOOD SERVICES
Neighborhoods@galthersburgmd.gov
Telephone: (301) 258-6340
Fax: (301) 258-6174

MULTI-FAMILY RENTAL FACILITY LICENSE APPLICATION

(In accordance with Chapter 13 and 18AA of the City Code)
All questions must be answered. Please type or print clearly in ink.

I. RENTAL FACILITY INFORMATION

Name of Facility West Deer Park Apartments
Address 72-A West Deer Park Road
City License Number 00128 Expiration Date 1/31/07
Telephone 301-366-4889 Fax 301-565-0059
Emergency Telephone (evenings and weekends) 202-409-5323

II. RESIDENTIAL DWELLING INFORMATION

A. 6 Total number of buildings
B. 198 Total number of residential dwelling units. (Exclude model apartments and units used exclusively for business purposes, such as the resident manager's office.)

☒ Please attach a current rent roll or an address list, including each building number and all apartment numbers in that building, for the entire complex.

III. FORM OF OWNERSHIP. Please choose from the four types listed.

☐ **SOLE PROPRIETORSHIP**

Property is owned by one individual, or by husband and wife.

A. Individual

Name (first, middle, last) _____
Address _____
City _____ State _____ Zip Code _____
Daytime Telephone _____ Secondary Telephone _____

B. Name of Spouse (if applicable)

Address _____
City _____ State _____ Zip Code _____
Daytime Telephone _____ Secondary Telephone _____

PERMAD-Bayonne, N.J.

B04
#22
A-529

9/12/07

EXHIBIT

☒ PARTNERSHIP

(General Partnership, Joint Venture, Limited Partnership, ect.)

Property is owned by two or more individuals, two or more corporations, or a combination of legal entities recognized by Maryland laws as able to do business as a partnership.

A. Trade name of Partnership, if not doing business under a trade name write NONE.

Name of Partnership WDP-RST, LLC
Contact Person Todd Copeland
Address 168 Business Park Drive, Suite 200
City Virginia Beach State VA Zip Code 23462
Daytime Telephone 757-473-3706 Secondary Telephone 757-589-0535

B. General Partner involved in the partnership of the facility.
Attach additional sheets as needed.

1. General Partner

Name (first, middle, last) RST III, LLC (100% owner of WDP-RST, LLC)
Address 168 Business Park Dr #200 City Virginia Beach
State VA Zip Code 23462 Telephone 757-473-3706

2. General Partner

Name (first, middle, last) Robert O. Copeland (Co-Member of RST III, LLC)
Address 1332 Penguin Circle City Virginia Beach
State VA Zip Code 23451 Telephone 757-425-0360

3. General Partner

Name (first, middle, last) Todd A. Copeland (Co-Member of RST III, LLC)
Address 324 Bay Colony Dr. City Virginia Beach
State VA Zip Code 23451 Telephone 757-496-3977

4. General Partner

Name (first, middle, last) M. Scott Copeland (Co-Member of RST III, LLC)
Address 6200 Poindexter Ln. City Rockville
State MD Zip Code 20852 Telephone 703-328-2648

5. General Partner

Name (first, middle, last) _____
Address _____ City _____
State _____ Zip Code _____ Telephone _____

☐ CORPORATION

Property is owned by a firm doing business as a corporation and legally chartered or registered to conduct business through the State of Maryland.

A. Corporation information

Full legal name of Corporation _____
Business Address _____
City _____ State _____ Zip Code _____
Contact Person _____ Telephone _____

B. Principal Officer information

1. Principal Officer

Name (first, middle, last) _____
Address _____ City _____
State _____ Zip Code _____ Telephone _____

2. Principal Officer

Name (first, middle, last) _____
Address _____ City _____
State _____ Zip Code _____ Telephone _____

3. Principal Officer

Name (first, middle, last) _____
Address _____ City _____
State _____ Zip Code _____ Telephone _____

4. Principal Officer

Name (first, middle, last) _____
Address _____ City _____
State _____ Zip Code _____ Telephone _____

C. Agent information

This section does not apply to Maryland chartered corporations. If the corporation was not chartered by the State of Maryland, list the agent information of its registered agent residing in Maryland. This agent must be able to accept service of process on behalf of the corporation named above. Agents must be registered with the State of Maryland Department of Licensing and Assessments in Baltimore, Maryland.

Name of Agent (first, middle, last) _____
Address _____ City _____
State _____ Zip Code _____ Telephone _____

☐ TRUST

Trust or other form of fiduciary relationship.

Trust information or other fiduciary responsible for the execution of all matters pertaining to the day-to-day operations of the facility.

Name of Trust _____
Court of Jurisdiction _____
Name of Trustee or Fiduciary _____
Address _____
State _____ Zip Code _____ Telephone _____

IV. ASSIGNMENT OF AGENCY

If it desired that City of Gaithersburg deal with, negotiate with, or otherwise transact business with an agent of the owner, list the name, address, and telephone number of such individuals or firm. It shall be assumed that the agency thus created is complete and all-inclusive of the powers and authorities vested in the owner, unless otherwise stipulated. If it is desired that the City of Gaithersburg deal directly with the owner, please write NONE in the space below. If the name of a firm is provided, such firm must be a legal entity as recognized by the State of Maryland.

☐ Individual

☐ Firm

Name of Firm/Agent _____
Address _____
State _____ Zip Code _____ Telephone _____

V. MANAGEMENT

If the day-to-day management of the facility is handled by a firm or individual other than the owner, list name and contact information of such a firm or individual. If the same as in section IV, write SAME. If not applicable write NONE.

☐ Individual

☒ Firm

Name of Firm/Agent Hercules Real Estate Services, Inc.
Address 168 Business Park Drive, Suite 103, Virginia Beach
State VA Zip Code 23462 Telephone 757-473-3706

VI. OFFICE MANAGER

If the rental facility possesses a resident or office manager, please list.
If there is no manager, please write NONE in the space.

Name of Manager Michael Shell
Address 8060 13th Street, Silver Spring
State MD Zip Code 20910 Telephone 301-565-0058

VII. LEGAL SERVICE OF PROCESS

If the owner of the rental facility does not reside in the State of Maryland, and the agent assigned, per section IV, does not reside in the State of Maryland, the owner must provide the name and contact information of an agent who does reside in Maryland, and is qualified to accept services on behalf of the owner.

☒ Owner resides in Maryland

☐ Owner does not reside in Maryland

Name of Agent _____
Address _____
State _____ Zip Code _____ Telephone _____

VII. OWNER'S SIGNATURE

I hereby affirm under penalty of perjury that the information on this application for a rental facility license is true to the best of my knowledge and belief.

Name of Owner (print) Robert O. Copeland
Signature Robert O. Copeland Date 11/6/06

Name of Co-owner, if applicable (print) Todd A. Copeland
Signature Todd A. Copeland Date 11/6/06

Name of Co-owner, if applicable (print) M. Scott Copeland
Signature M. Scott Copeland Date 11/6/06

Name of Co-owner, if applicable (print) _____
Signature _____ Date _____

08/17/2006
4:02 pm

HERCULES REAL ESTATE SERVICES
West Deer Park Apartments
Rent Roll

Page 1
ID 3.6.6

As Of 6 Jul 2006

Grouping Codes Included: ABCDEFGHIJKLMNOPQRSTUVWXYZ

Unit #	Name	Type	Sq. Ft.	Autobill	Deposit	Moved In	Lease Ends	Status
56-T1	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
56-T2	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
56-T3	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
56-T4	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
58-T3	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
58-T4	Vacant	2BR2B	1,200	1,255.00	0.00			VU
60-T1	Vacant	1BR1	900	1,120.00	0.00			VU
60-T2	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
60-T3	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
60-T4	Vacant	3BR2	1,360	1,455.00	0.00			VU
62-T1	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
62-T2	Vacant	2BR/2BA	1,200	1,255.00	0.00			VU
62-T3	Vacant	2BR2B	1,200	1,255.00	0.00			VU
62-T4	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
64-T1	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
64-T2	Vacant	3BR2	1,360	1,455.00	0.00			VU
64-T3	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
64-T4	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
66-T1	Vacant	1BR1	900	1,120.00	0.00			VU
66-T2	Vacant	1BR1	900	1,120.00	0.00			VU
66-T3	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
66-T4	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
68-T1	Vacant	2BR2B	1,200	1,255.00	0.00			VU
68-T2	Vacant	2BR2B	1,200	1,255.00	0.00			VU
68-T3	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
68-T4	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
70-T1	Vacant	2BR2B	1,200	1,255.00	0.00			VU
70-T2	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
70-T3	Vacant	2BR2B	1,200	1,255.00	0.00			VU
70-T4	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
72-T1	Vacant	1BR1	900	1,120.00	0.00			VU
72-T2	Vacant	1BR1	900	1,120.00	0.00			VU
72-T3	Vacant	3BR2	1,360	1,455.00	0.00			VU
72-T4	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
74-T1	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
74-T2	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
74-T3	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
74-T4	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
76-T1	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
76-T2	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
76-T3	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
76-T4	Vacant	3BR2	1,360	1,455.00	0.00			VU
78-T1	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
78-T2	Vacant	2BR2B	1,200	1,255.00	0.00			VU
78-T3	Vacant	2BR2B	1,200	1,255.00	0.00			VU
78-T4	Vacant	2BR2B	1,200	1,255.00	0.00			VU
80-T1	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
80-T2	Vacant	3BR2	1,360	1,455.00	0.00			VU

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HERCULES REAL ESTATE SERVICES
West Dear Park Apartments
Rent Roll

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As Of 6 Jul 2006

Grouping Codes Included: ABCDEFGHIJKLMNOPQRSTUVWXYZ

Unit #	Name	Type	Sq.Ft.	Autobill	Deposit	Moved In	Lease Ends	Status
80-T3	Vacant	1BR1	900	1,120.00	0.00			VU
80-T4	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
82-T1	Vacant	2BR2B	1,200	1,255.00	0.00			VU
82-T2	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
82-T3	Vacant	2BR2B	1,200	1,255.00	0.00			VU
82-T4	Vacant	2BR2B	1,200	1,255.00	0.00			VU
84-T1	Vacant	2BR2B	1,200	1,255.00	0.00			VU
84-T2	Vacant	2BR2B	1,200	1,255.00	0.00			VU
84-T3	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
84-T4	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-T1	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-T2	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
86-T3	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-T4	Vacant	2BR2B	1,200	1,255.00	0.00			VU
88-T1	Vacant	2BR2B	1,200	1,255.00	0.00			VU
88-T2	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
88-T3	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
88-T4	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
56-101	Vacant	2BR2B	1,200	1,255.00	0.00			VU
56-102	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
56-103	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
56-104	Vacant	2BR2B	1,200	1,255.00	0.00			VU
56-201	Vacant	2BR2B	1,200	1,255.00	0.00			VU
56-202	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
56-203	Vacant	2BR2BDRH	1,300	1,485.00	0.00			VU
56-204	Vacant	2BR2B	1,200	1,255.00	0.00			VU
58-103	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
58-104	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
58-203	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
58-204	Vacant	2BR2B	1,200	1,255.00	0.00			VU
60-101	Vacant	1BR1	900	1,120.00	0.00			VU
60-102	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
60-103	Vacant	3BR1	1,360	1,455.00	0.00			VU
60-104	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
60-201	Vacant	1BR1	900	1,120.00	0.00			VU
60-202	Vacant	1BRD	900	1,165.00	0.00			VU
60-203	Vacant	3BR2	1,360	1,455.00	0.00			VU
60-204	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
62-101	Vacant	2BR2B	1,200	1,255.00	0.00			VU
62-102	Vacant	2BR2B	1,200	1,255.00	0.00			VU
62-103	Vacant	2BR2B	1,200	1,255.00	0.00			VU
62-104	Vacant	2BR2B	1,200	1,255.00	0.00			VU
62-201	Vacant	2BR2B	1,200	1,255.00	0.00			VU
62-202	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
62-203	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
62-204	Vacant	2BR2B	1,200	1,255.00	0.00			VU
64-101	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
64-102	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU

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HERCULES REAL ESTATE SERVICES
West Deer Park Apartments
Rent Roll

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As Of 6 Jul 2006

Grouping Codes Included: ABCDEFGHIJKLMNOPQRSTUVWXYZ

Unit #	Name	Type	Sq. Ft.	Autobill	Deposit	Moved In	Lease Ends	Status
64-103	Vacant	1BR1	900	1,120.00	0.00			VU
64-104	Vacant	1BR1	900	1,120.00	0.00			VU
64-201	Vacant	3BR2	1,360	1,455.00	0.00			VU
64-202	Vacant	3BR2	1,360	1,455.00	0.00			VU
64-203	Vacant	1B/D/REH	1,000	1,290.00	0.00			VU
64-204	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
66-101	Vacant	1BR1	900	1,120.00	0.00			VU
66-102	Vacant	1BR1	900	1,120.00	0.00			VU
66-103	Vacant	3BR2	1,360	1,455.00	0.00			VU
66-104	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
66-201	Vacant	1BR1	900	1,120.00	0.00			VU
66-202	Vacant	1B/D/REH	1,000	1,290.00	0.00			VU
66-203	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
66-204	Vacant	3BR2	1,360	1,455.00	0.00			VU
68-101	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
68-102	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
68-103	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
68-104	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
68-201	Vacant	2BR2B	1,200	1,255.00	0.00			VU
68-202	Vacant	2BR2B/DRE	1,300	1,485.00	0.00			VU
68-203	Vacant	2BR2B	1,200	1,255.00	0.00			VU
68-204	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
70-101	Vacant	2BR2B	1,200	1,255.00	0.00			VU
70-102	Vacant	2BR2B	1,200	1,255.00	0.00			VU
70-103	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
70-104	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
70-201	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
70-202	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
70-203	Vacant	2BR2B	1,200	1,255.00	0.00			VU
70-204	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
72-101	Vacant	1BR1	900	1,120.00	0.00			VU
72-102	Vacant	1BR1	900	1,120.00	0.00			VU
72-103	Vacant	3BR2	1,360	1,455.00	0.00			VU
72-104	Vacant	3BR2	1,360	1,455.00	0.00			VU
72-201	Vacant	1BR2	900	1,120.00	0.00			VU
72-202	Vacant	1B/D/REH	1,000	1,290.00	0.00			VU
72-203	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
72-204	Vacant	3BR2	1,360	1,455.00	0.00			VU
74-101	Vacant	1BR1	900	1,120.00	0.00			VU
74-102	Vacant	1BR1	900	1,120.00	0.00			VU
74-103	Vacant	3BR2	1,360	1,455.00	0.00			VU
74-104	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
74-201	Vacant	1BR/1/RE	900	1,215.00	0.00			VU
74-202	Vacant	1BRD	900	1,165.00	0.00			VU
74-203	Vacant	3BR2	1,360	1,455.00	0.00			VU
74-204	Vacant	3BR2	1,360	1,455.00	0.00			VU
76-101	Vacant	1BR1	900	1,120.00	0.00			VU
76-102	Vacant	1BR1	900	1,120.00	0.00			VU

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HERCULES REAL ESTATE SERVICES

West Deer Park Apartments

Rent Roll

As Of 6 Jul 2006

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Grouping Codes Included: ABCDEFGHIJKLMNOPQRSTUVWXYZ

Unit #	Name	Type	Sq.Ft.	Autobill	Deposit	Moved In	Lease Ends	Status
76-103	Vacant	3BR2	1,360	1,455.00	0.00			VU
76-104	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
76-201	Vacant	1BR1	900	1,120.00	0.00			VU
76-202	Vacant	1B/D/REH	1,000	1,290.00	0.00			VU
76-203	Vacant	3BR2	1,360	1,455.00	0.00			VU
76-204	Vacant	3BR2	1,360	1,455.00	0.00			VU
78-101	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
78-102	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
78-103	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
78-104	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
78-201	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
78-202	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
78-203	Vacant	2BR2B	1,200	1,255.00	0.00			VU
78-204	Vacant	2BR2B	1,200	1,255.00	0.00			VU
80-101	Vacant	3BR2	1,360	1,455.00	0.00			VU
80-102	Vacant	3BR2	1,360	1,455.00	0.00			VU
80-103	Vacant	2BR/1/RE	1,200	1,330.00	0.00			VU
80-104	Vacant	2BR1E1	1,200	1,185.00	0.00			VU
80-201	Vacant	3BR2	1,360	1,455.00	0.00			VU
80-202	Vacant	3BR/2/RE	1,360	1,580.00	0.00			VU
80-203	Vacant	2BR1BDRE	1,300	1,430.00	0.00			VU
80-204	Vacant	2BR/1/RE	1,200	1,330.00	0.00			VU
82-101	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
82-102	Vacant	2BR2B	1,200	1,255.00	0.00			VU
82-103	Vacant	2BR2B	1,200	1,255.00	0.00			VU
82-104	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
82-201	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
82-202	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
82-203	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
82-204	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
84-101	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
84-102	Vacant	2BR2B	1,200	1,255.00	0.00			VU
84-103	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
84-104	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
84-201	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
84-202	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
84-203	Vacant	2BR2B	1,200	1,255.00	0.00			VU
84-204	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-101	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-102	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-103	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-104	Vacant	2BR2B	1,200	1,255.00	0.00			VU
86-201	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
86-202	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
86-203	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
86-204	Vacant	2BR2B	1,200	1,255.00	0.00			VU
88-101	Vacant	2BR2B	1,200	1,255.00	0.00			VU
88-102	Vacant	2BR2B	1,200	1,255.00	0.00			VU

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HERCULES REAL ESTATE SERVICES
West Deer Park Apartments
Rent Roll
As Of 6 Jul 2006

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ID 3.6.6

Grouping Codes Included: ABCDEFGHIJKLMNOPQRSTUVWXYZ

Unit #	Name	Type	Sq. Ft.	Autobill	Deposit	Moved In	Lease Ends	Status
88-103	Vacant	2BR2B	1,200	1,255.00	0.00			VU
88-104	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
88-201	Vacant	2BR2B	1,200	1,255.00	0.00			VU
88-202	Vacant	2BR2BAD	1,200	1,360.00	0.00			VU
88-203	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU
88-204	Vacant	2BR/2/RE	1,200	1,385.00	0.00			VU

Code	Status	# Units	Rent Schedule	Amount
O	Occupied, No Notice	0	Units Occupied--Actual Rents	0.00
NU	Occupied, Notice Unrented	0	Units Vacant--Vacant Potential	264,265.00
NR	Occupied, Notice Rented	0		
VU	Vacant, Unrented	198	100% (Gross) Potential Value	264,265.00
VR	Vacant, Rented	0		
SU	Charging A Skip, Unrented	0	Total Deposits	0.00
SR	Charging A Skip, Rented	0	Total Rentable Square Feet	233,620
Total Units		198		

RST III, LLC

CITYGATHE City of Gaithersburg

DATE	INVOICE NO	DESCRIPTION	INVOICE AMOUNT	DEDUCTION	BALANCE
11/06/06	110606	WDP Rental Lic Appliance	19800.00	.00	19800.00
CHECK DATE	CHECK NUMBER	4470	TOTAL >	19800.00	.00
11/06/06					19800.00

PLEASE DETACH AND RETAIN FOR YOUR RECORDS.

RST III, LLC
168 Business Park Drive, STE 200
Virginia Beach, VA 23462

B&K
Virginia Beach, VA 23455

PAY TO THE ORDER OF City of Gaithersburg

DATE November 6, 2006 CHECK NO. 4470 AMOUNT \$19,800.00

Pay: *****Nineteen thousand eight hundred dollars and no cents



⑈0000004470⑈ ⑆051404260⑆0005133440447⑈

S. D. A.
SITE DEVELOPMENT APPROVAL

CITY OF GAITHERSBURG PLANNING DEPARTMENT

Stearman - Kaplan
5300 Westbard Avenue
Bethesda, Maryland 20014

S-236 — KRA-BARR APARTMENTS
Deer Park Road West

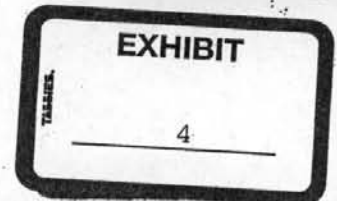
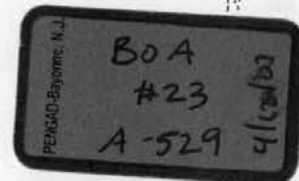
Dear Applicant:

The Planning Commission of the City of Gaithersburg at their last regular scheduled meeting has granted your application for the final site development approval.

All permits which are required by the Ordinance of the City of Gaithersburg may now be applied for at the Department of Licenses and Regulations at the Civic Center, 31 South Summit Avenue.

This approval is issued subject to all contingencies enumerated on the reverse side of this form. Items not shown on the application that the Commission requires to be included in the project are as follows:

None.



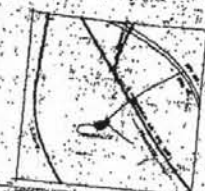
cc: Department of Licenses and Inspections

Date: October 12, 1970

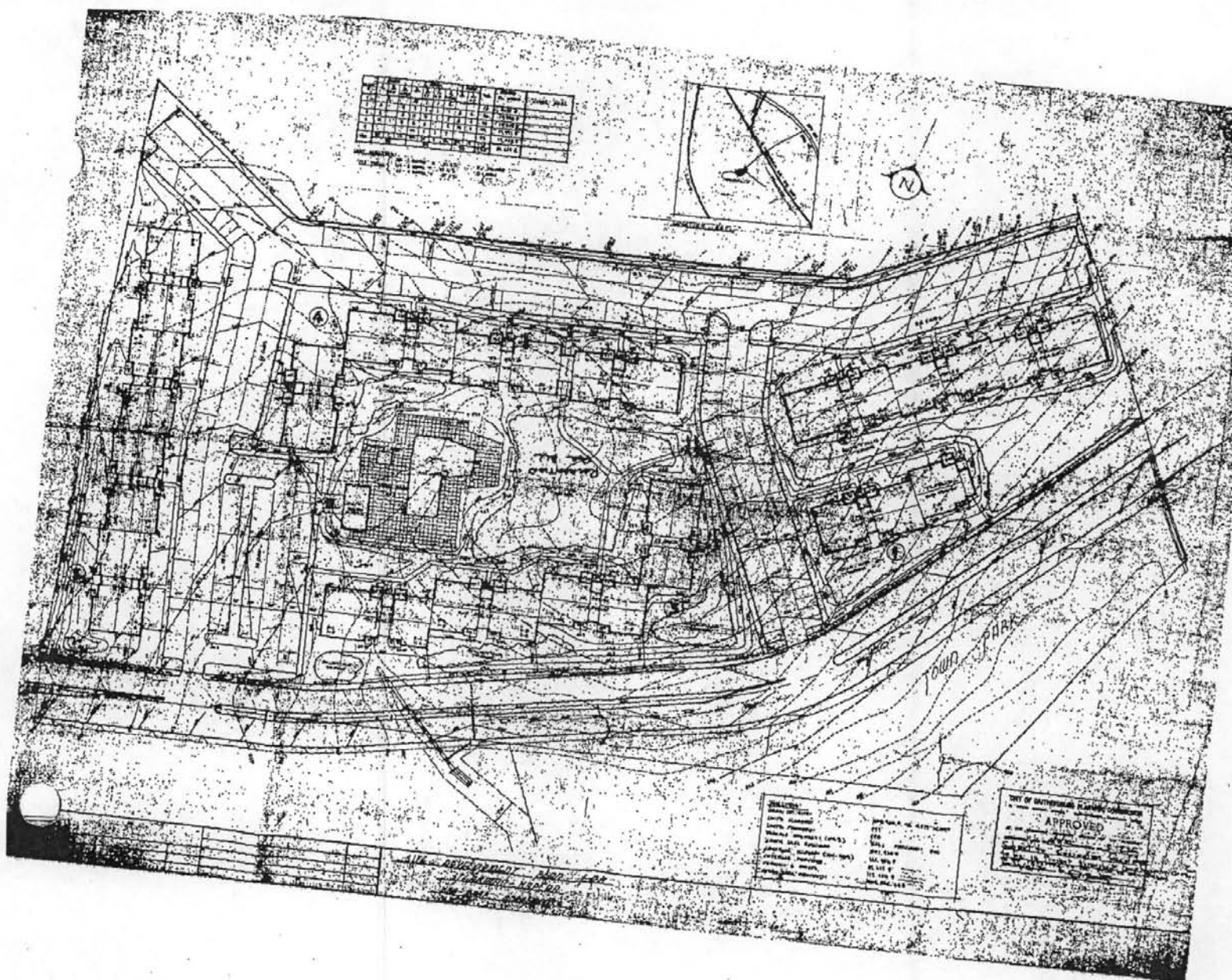
Planning Director: _____

Carl A. Zellner

NO.	DESCRIPTION	DATE	BY	REMARKS
1
2
3
4
5
6
7
8
9
10



N



NO.	DESCRIPTION	DATE	BY	REMARKS
1
2
3
4
5
6
7
8
9
10

APPROVED
 [Signature]
 [Title]

BOA
 #24
 A-529
 4/12/07

EXHIBIT
 5

BEFORE THE BOARD OF APPEALS FOR THE CITY OF GAITHERSBURG

IN THE MATTER OF
Petitioner WDP-RST LLC
(WEST DEER PARK APARTMENTS)

Administrative Review
Application Case A-529

SUMMARY OF EXPERT TESTIMONY AND CREDENTIALS

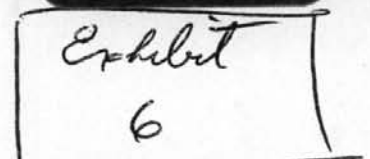
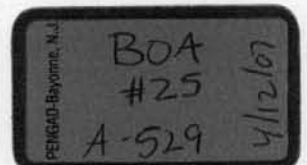
The Petitioner, WDP-RST, LLC ("Petitioner"), will call Robert G. Brewer, Jr., Esq. as an expert on land use, zoning and planning in Maryland.

Credentials

Mr. Brewer is a graduate of Hamilton College (1973) and the University of Maryland School of Law, with honors (1976). He is admitted to practice in Maryland and the District of Columbia. After a judicial clerkship with Hon. Richard B. Latham, Montgomery County Circuit Court, Mr. Brewer joined Lerch, Early & Roseman in Bethesda, Maryland, now known as Lerch, Early & Brewer, in 1977. Mr. Brewer has practiced extensively in the land use and zoning field for approximately 30 years, and he currently chairs Lerch, Early & Brewer's six attorney land use and zoning practice group. Mr. Brewer has been named by his peers to the Best Lawyers in America for Land Use and Zoning, and he is also listed in the Chambers Directory for his land use expertise. Most of his land use practice revolves around representing major companies and real estate developers for projects in Montgomery County. He is active in a wide array of business groups, trade associations, and civic organizations.

Summary of Testimony

Mr. Brewer is expected to testify, based on his educational background, knowledge and experience, and on his review of relevant provisions of the City of Gaithersburg Code ("Gaithersburg Code"), that:



1. The re-occupation and use of the land and improvements located at 70 West Deer Park Park, Gaithersburg, Maryland, and known as the West Deer Park Apartments (the "Apartment Project"), for rental of the individual apartments to residential tenants, is a permitted use of the Apartment Project under the Gaithersburg Code. Mr. Brewer will testify that the Apartment Project is located within the R-20 zone of the City of Gaithersburg, and that multi-family residential uses of the Apartment Project, such as the rental of individual apartments to residential tenants, are permitted as a matter of right under the standards of the R-20 zone.

2. The Petitioner is not required to submit either a site development plan or a site development plan amendment in order for the Petitioner to re-occupy and use the Apartment Project for rental of the individual apartments to residential tenants. Mr. Brewer will testify that Section 24-168 of the Gaithersburg Code requires site development plan approval only in circumstances where a building or structure is being "erected, moved, added to or structurally altered," and that in this case no site development plan approval is required because the Petitioner is not planning to erect, move, add to or structurally alter any building or structure. He will further testify that even if site development plan approval was otherwise required (which it is not), the Gaithersburg Code (section 24-168) specifically provides that no site development plan approval would be required in this case because (i) the proposed use is a permitted use in the R-20 zone, (ii) the proposed use is the same as the use for which the prior occupant of the Apartment Project used the premises, and (ii) the proposed use has already been the subject of a site development plan approved by the planning commission.

3. The proposed multi-family use of the Apartment Project is not rendered a non-conforming use under the Gaithersburg Code by virtue of the fact that the Apartment Project does not contain the number of parking spaces that would be required under the Gaithersburg

Code if the Apartment Project were being built today. Mr. Brewer will testify that whether a proposed use is a non-conforming use is determined by whether the primary purpose for which the property will be used is a permitted use under the applicable zone, and that the number of parking spaces provided as an accessory use is not relevant to the determination of whether the proposed use is a non-conforming use. He will testify that because the primary purpose for which the Apartment Project will be used – multi-family housing – is a permitted use in the R-20 zone, the proposed use is not a non-conforming use.

4. The Apartment Project meets the parking requirements imposed by the Gaithersburg Code. Mr. Brewer will testify that under Section 24-218 of the Gaithersburg Code, the number of parking spaces required for a multi-family housing project is determined at the time the residential buildings are erected, enlarged or structurally modified. He will testify that an owner of property constructed in accordance with the applicable parking requirements is not required to add additional parking spaces if the Gaithersburg Code is later amended to require additional parking for new construction unless the apartment buildings are enlarged or structurally modified.

BEFORE THE BOARD OF APPEALS FOR THE CITY OF GAITHERSBURG

IN THE MATTER OF
RST DEVELOPMENT, LLC
(WEST DEER PARK APARTMENTS)

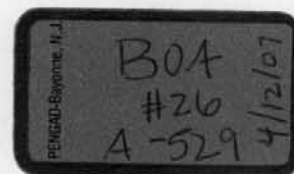
Administrative Review
Application Case A-529

PRE-HEARING SUBMISSION OF RESPONDENT –
THE CITY OF GAITHERSBURG

The City of Gaithersburg Planning & Code Administration, Respondent in the above referenced administrative appeal (“Respondent”), through undersigned counsel, opposes the petition for administrative review filed by Petitioner. Pursuant to Section 2.24(b) of the Board of Appeals’ Rules of Procedure, Respondent files this prehearing statement and states as follows.

(1) Statement of grounds upon which petition is based.

Summary of Petitioner’s Arguments. Petitioner has appealed two separate issues to the Board. As to the site development plan approval issue, Petitioner argues that 1) under Section 24-168 of the City Code, site development plan approval is not required; 2) that even if Section 24-168 applies to Petitioner, an exception within that section also applies to negate the need for site plan approval; 3) that Petitioner’s use of the property (the “Apartment Project”) is not non-conforming; and 4) that the Apartment Project meets the parking requirements of the Code that existed when the multi-family use was constructed and, therefore, the City cannot require that the parking be brought into conformity with current requirements upon reoccupation. With regard to the rental housing license issue, Petitioner argues that 1) the City failed to notify Petitioner of the specific violation that required cure before a license could be issued, and that, in fact, no



violation actually existed; and 2) that the City has not complied with the procedures required under Chapter 18AA of the City Code.

Burden of proof. Section 24-189 of the City’s Zoning Ordinance, addressing the findings required for the Board of Appeals to grant a petition for administrative review, sets forth the petitioner’s burden of proof in this matter. Specifically, the petition may be granted only where the petitioner demonstrates that the determination appealed from “was clearly erroneous or not in accordance with the law.” *Id.* In looking at statutory construction, “the ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation.” *Bowles v. Seminole Rock and Sand Co.*, 325 U.S. 410, 414, 65 SCt 1215, 1217, 89 L.Ed. 1700, 1702 (1945). *See also, Beth Tfiloh Congregation of Baltimore City, Inc. v. Glyndon Community*, 152 Md.App. 97, 831 A.2d 93 (2003), *citing, Ideal Fed. Savings Bank v. Murphy*, 339 Md. 446, 461, 663 A.2d 1272 (1995). Thus, the standard of review is very high, and the City’s interpretation of the Zoning Ordinance in this case is entitled to a great deal of deference.

History of the project. The original garden style apartment use plan was approved as S-236 on October 12, 1970. The apartments have existed in their current form since 1973. Upon purchasing the property in April, 2004, petitioner immediately sought to redevelop the property into a townhouse community under the R-20 TND option. This effort involved the displacement and relocation of 198 families who were occupying the apartments at the time of petitioner’s purchase. This also involved a significant financial contribution from the City, including the appropriation of \$200,000.00 in partnership with HOC to create a housing purchase initiative fund for

displaced tenants. That appropriation was based in part on anticipated permit fees to be collected from the developer.¹

On January 4, 2006, petitioner obtained final site plan approval from the Planning Commission to move forward with the town house development.² The apartments were finally vacated completely on July 6, 2006, when the last remaining tenant moved out. The apartments remain vacant at this time.

In September, 2006, petitioner informed the City that it believed it could no longer afford to proceed with the town house project. Petitioner thus intended to reoccupy the apartments. Petitioner sought guidance from the City as to what would be required of petitioner in order to accomplish this reoccupation. It is from the City's decision on this point that petitioner appeals.

Zoning History. The subject property retains its original R-20 zoning. The parking for the apartments in 1970 was calculated under the original 1965 zoning ordinance requirements that were applicable to the apartment community. In 1980, those original parking requirements were amended by ordinance number O-13-80. As a result of the amendment, the parking at the apartments became non-conforming: the number of off-street parking spaces required for this use under current (1980) standards is 405, while the total number of spaces existing at the property is only 375.³ However, since the operation of the apartments had neither ceased nor changed in any way when the parking

¹ Although the City has spent approximately \$60,000.00 on the housing initiative fund to date, no permit fees have been collected since the project has not moved forward.

² The PC&A issued the signed Site Development Approval January 11, 2006.

³ Parking areas are an important and required *use* of improved property. In this context, the definition of "non-conforming use" in the City Zoning Ordinance (§24-1) refers not only to the use of buildings but also to the use of "*land*:" "[a] use of a building *or of land* lawfully existing at the time this chapter or the previous zoning ordinance became effective and which does not conform with the use regulations of the zone in which it is located."

requirements were amended, the amended parking requirements did not become applicable to the apartments at the time of the amendment.

Proposed Reoccupation. Petitioner argues that, since multi-family is a permissible use in the R-20 zone, there is no non-conforming use.⁴ Therefore, the apartments may be reoccupied by right, without the need for bringing anything into conformity. Petitioner's argument is too narrow.

a) Site Development Plan Approval

1) Non-conforming Uses Generally.

The change in the parking requirements, which requires additional parking than what currently exists at the property, has created a non-conforming use. A non-conforming use is a use which lawfully existed prior to the enactment of a zoning ordinance or amendment thereto which is maintained after the enactment of the ordinance or amendment, and does not comply with current zoning restrictions applicable to the development. 1 Anderson, American Law of Zoning, §6.01, 4th ed. A lawful, non-conforming use is established if at the time of the adoption of a zoning ordinance, the property was being used in a lawful manner, but by later legislation, including an amendment, it became non-permitted. Trip Associates v. Mayor and City Council of Baltimore, 898 A.2d 449 (Md. 2006). The City has not taken the position that the multi-family use of the property itself is non-conforming. Had the City taken that position, it would have cited to Section 24-19 of the Code, which addresses that scenario. However,

⁴ Section 24-19 states “[i]f a lawful use of a structure or of a structure and premises in combination, exists on March 22, 1965, or on the effective date of an amendment to this chapter, that would not be allowed in the zone under the terms of this chapter....” Contrary to petitioner's assertions, the City has not alleged that the *type* (*i.e.* multi-family) of use of the structure or structure and premises would not be allowed in the R-20 zone today. Accordingly, the provisions of §24-19 have not been applied to petitioner's plan.

after the 1980 amendment to the zoning ordinance to increase the parking requirements applicable to the multi-family use at this project, this multi-family use would not be permitted in its current form due to insufficient parking. Although Petitioner argues that the parking is in conformance since it was in conformance at the time of the original construction, that argument ignores the fact that the original use was discontinued for more than ninety (90) days, that the reoccupation is therefore a subsequent use, and a subsequent use must be established in conformance with the Code. *See*, §24-17.

2) *Totality of Use of Land*

In looking at this use, it is necessary to look at the totality of the use, not just the use of the buildings on site. This is clearly expressed in the definition of “non-conforming use” in the City Zoning Ordinance (§24-1) which applies to the status of non-conforming use to not only buildings, but also to the “*land*.”⁵ Although Petitioner disputes this position, and states that it is contrary to provisions of the City Code, Petitioner has failed to cite any authority to contradict this very basic premise of land use principles. Moreover, as the administrative body charged with interpreting the City Code, the Planning and Code Administration is entitled to great deference when rendering decisions based on its interpretations. Such interpretation is, in fact, of controlling weight unless it is plainly erroneous. Bowles v. Seminole Rock and Sand Co., 325 U.S. 410, 414, 65 SCt 1215, 1217, 89 L.Ed. 1700, 1702 (1945). As the following will illustrate, Respondent’s interpretation is not erroneous and is in accordance with the law.

⁵ Sec. 24-1: “[a] use of a building *or of land* lawfully existing at the time this chapter or the previous zoning ordinance became effective and which does not conform with the use regulations of the zone in which it is located.”

Under section 24-17(c) of the City's Zoning Ordinance, if a non-conforming use of land ceases for a period of more than ninety (90) days, *for any reason, any* subsequent use of the land shall conform to the regulations specified in Chapter 24 for the zone in which such land is located. The subsequent use can include the same use. The regulations in Chapter 24 include the parking requirements attendant to each use. The occupancy, and therefore the use, of the subject property as multi-family residential has ceased for more than ninety (90) days, evidenced by the vacancy of the building units as of July 6, 2006 and the discontinuance of utility services to the buildings and apartments. Therefore, under 24-17(c), the subsequent use must conform to the current parking requirements contained in Chapter 24.

Petitioner also argues that the provisions of 24-168 do not apply in this case. Contrary to petitioner's argument, section 24-168 of the Zoning Ordinance is relevant to this analysis. Under that section,

...nor shall any use be established, altered or enlarged under circumstances which require the issuance of a use and occupancy permit under this chapter, upon any land, until a site development plan for the land upon which such ... use is to be erected, moved, added to, altered, established or enlarged has been approved by the city planning commission.

The total use has been discontinued for more than ninety (90) days, and therefore the total use must conform to the current requirements. §24-17(c). In order to comply with the parking requirements, the use either must be altered or enlarged to add or reconfigure the parking, or to alter the number of units so as to reduce the number of required parking spaces to conform to the present conditions. Thus, under section 24-178, a use and occupancy permit will be required as part of the re-establishment of the total use. The

parking required by Chapter 24 is an element attendant to the multi-family use. Parking is required as part of the use; if that part of the use is non-conforming, a non-conforming use of the land exists. As indicated to petitioner, that conformance must be demonstrated in one of two ways: either by amending the site plan to show a reconfiguration of the parking to meet the current requirements (§24-219) in accordance with §24-168, or by obtaining a waiver from the current parking requirements (*see*, §24-222A).

Petitioner further argues that under Section 24-168 no such approval is required because the proposed use is a permitted use in the zone, it is exactly the same as the prior use and had already been the subject of a site development plan. Again, however, Petitioner ignores the fact that the prior use has been discontinued and not in use for more than 90 days. Since the parking requirements had changed, the totality of the use was non-conforming. Under Section 24-17, following discontinuance of the use, *any* subsequent use of the land must be brought into conformance. Therefore, the parking must be brought into conformance. To do that, the site plan approval already obtained must be amended to reflect the changes required at the project to bring the parking into conformance.

3) *Parking as an Accessory Use*

Alternatively, even if parking is not considered a use in itself or an essential element of the totality of the use in combination with the apartment use, arguments which the City does not concede, at the very least the parking attendant to and required as part of the apartment use is an accessory use to the principal apartment use. A non-conformity of the accessory use will lead to the same required result.

The City Zoning Ordinance defines “accessory use” as [a] use on the same lot with and of a nature customarily incidental and subordinate to, the principal use of the main building or lot.” §24-1. The parking requirements in §24-219 specify the parking required for a multi-family use. Thus, the use of the land for parking is incidental and subordinate to the principal multi-family apartment use.

Section 24-17(c) states that, if a non-conforming use of land ceases for a period of more than ninety (90) days, for any reason, *any subsequent use* of the land shall conform to the regulations specified in Chapter 24 for the zone in which such land is located. Once the parking requirements were amended in 1980, the accessory parking use became non-conforming. Section 24-17(c) clearly states that *any* subsequent use of the land must conform. Therefore, since the accessory parking use has been discontinued for 90 days, any subsequent use – whether it is the accessory or principal use – must conform to the requirements of Chapter 24. The principal use cannot operate without the accessory parking use. The parking use is non-conforming. Thus, in order to reoccupy, the parking must be brought into conformance, via either a parking waiver or an amendment to the site plan reconfiguring the parking.

b) Rental Housing License

Although the City of Gaithersburg did not immediately schedule an inspection of Property upon receipt of the Petitioner’s rental housing license application, neither did the City make a decision with regard to the license that was erroneous or contrary to law.

Petitioner submitted its application for the license on November 6, 2006. However, Petitioner had been told in a meeting on October 23, 2006 that it would be required to file for site plan approval in order to re-lease the Apartment Project. In fact,

on November 22, 2006, Petitioner filed an appeal from that decision. Thus, at the time of the filing for the license, Petitioner did not have site plan approval from the City. Without such approval, there was no reason to process the rental housing license application. When the appeal of the site plan approval question was filed, the City determined that, until the outcome of that proceeding, the question remained pending and the license application should not be processed. Ultimately, even if the license application had been processed at that time, Petitioner could not have moved forward without a use and occupancy permit, which in turn could not have been issued until various conditions at the property were resolved. For example, Petitioner had had power to the property discontinued. Until such time as power was restored, no use and occupancy could be issued. Although Petitioner argues that the conditions at the property requiring corrective action were due to some action of the City, Petitioner misrepresents the facts.

As noted above, it was Petitioner who arranged for power to be discontinued, not the City. In addition, while Petitioner had begun interior demolition, that work had ceased during the pendency of the appeal. As a result, a hazardous condition existed and the City required that the property be boarded up as a safety precaution.

With regard to the electrical permit, Petitioner also misstates the facts. The City did not refuse to inspect the electrical work that was required prior to reestablishment of power to the property. Petitioner applied for a permit for the work, which it was issued. The work was completed and Petitioner called for an inspection. Given the scope of the project, and the pending appeal, Mr. Ossont wanted a full understanding of the work that was done prior to scheduling the inspection. In this way, Mr. Ossont could ensure that

the inspection was thorough and covered all work that was done. Once the contractor provided this explanation, Mr. Ossont sent an inspector the next day to final out the project. The City was under no timing requirements in scheduling the inspection of the electrical work. Contrary to Petitioner's assertions, the inspection was not conducted in response to threats from Petitioner. The City does not act in response to threats. On the contrary, Mr. Ossont wanted to ensure that the inspection covered all the work that was done and required a full explanation of that work to ensure that the inspection was done correctly.

Finally, while the City may have retained the check sent with the rental housing license application, those checks were held with the application until such time as Mr. Ossont felt he had sufficient information to render a decision, *i.e.* until the Board of Appeals' first proceeding on the site plan approval was completed. The check was not cashed. Upon receipt of the Board's resolution, Mr. Ossont provided his decision to Petitioner in the February 22, 2007 letter. Under the City Code, Petitioner is required to obtain site plan approval prior to reoccupying the Apartment Project. Until such site plan approval is done, it amounts to nothing more than a waste of resources for the City to schedule inspections and issue temporary rental licenses for a property that cannot be rented at that time.

- (2) *Copies of all reports, studies and other documents and plans intended to be introduced at the hearing.*

1970 Site Plan, S-236 (Exhibit A)

July 6, 2006 electronic mail from Sara McLaughlin, RST,
indicating date of final vacancy (Exhibit B)

Ordinance No. O-2-65, including parking requirements applicable when site plan was approved (Exhibit C)

Ordinance No. O-13-80, amending parking requirements (Exhibit D)

Current parking requirements, §24-219, City Code (Exhibit E)

- (3) Summary of expert testimony and credentials which will be proffered at the hearing.

Objection to Petitioner's Expert. As this issue is strictly a question of whether Respondent's interpretation of its own law is correct, Respondent objects to the introduction of the Petitioner's proffered expert testimony. The Board's scope of review is to determine whether the City's decision to require a site plan amendment was clearly erroneous or not in accordance with the law. As noted above, the City is entitled to great deference in interpreting the laws it administers, and such decisions are of controlling weight unless plainly erroneous. Whether a land use lawyer wholly unconnected with this case believes the City Code could or should be interpreted in a manner differing from Respondent's, is of no relevance to this Board. Petitioner has cited to no Maryland authority for the proposition that it's expert's interpretation is correct under the law. Moreover, although Mr. Brewer has unquestionably excellent credentials, Petitioner has offered nothing to indicate that Mr. Brewer has any experience with interpreting the City's Code.

Designation of Respondent's Expert. In the event that the Board allows Mr. Brewer to testify, Respondent reserves the right to call Stanley D. Abrams, Esq. For more than twenty (20) years, Mr. Abrams served as the former City Attorney for the City of Gaithersburg. In that capacity, he not only provided guidance to the City as it made its decisions under the Code, he also drafted significant portions of the Code, most

particularly the zoning ordinance. Thus, although he is a noted expert in land use and zoning generally in Maryland, he has particular expertise and knowledge of the City Code. Recognizing that the testimony of the experts may come down to the weight to be afforded each by the Board, Mr. Abrams testimony should be of great assistance to the Board in determining that, in fact, the City's decision is in accordance with the law.

Mr. Abrams' Credentials. A copy of Mr. Abrams' resume is attached as Exhibit F.

Summary of Mr. Abrams' Testimony. Mr. Abrams will testify generally as to the applicability of Sections 24-17 and 24-168 of the City Code to the Apartment Project. He will testify to matters relative to the applicability of the Code, including, for example, that the totality of the use of the Apartment Project became non-conforming when the parking requirements for the use changed in 1980. Since the use was discontinued for more than 90 days, any subsequent use must be brought into conformance with the regulations in Chapter 24, including the parking requirements. In addition, the alterations that will be required to bring the property into conformance will require an amendment to the site plan approval in keeping with the City Code.

(4) Identity of all witnesses who will testify.

Respondent reserves the right to call the following persons to testify:


Greg Ossont
Director, Planning & Code Administration
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, Maryland 20877

Stanley D. Abrams, Esq.
Abrams & West, P.C.
4550 Montgomery Avenue, Suite 760N
Bethesda, Maryland 20814

(5) Estimated time required for presentation

Respondent estimates that, exclusive of rebuttal, it should take approximately one to one and a half hours to present its case. However, this appeal is from the City staff's interpretation of the City Code. As such, it is a challenge to the interpretation of a law, rather than a dispute of fact. Therefore, Respondents reserve the right to submit on the brief, unless petitioner raises questions of fact at the hearing not previously raised, Respondent believes rebuttal necessary, or unless the Board has questions for Respondents.

Respectfully submitted,



Cathy G. Borten
City Attorney
City of Gaithersburg
31 S. Summit Avenue
Gaithersburg, MD 20877
Counsel for Respondent

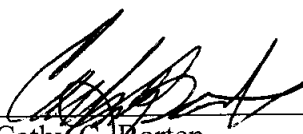
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Prehearing Statement was served this 29th day of March, 2007, by first class mail, postage prepaid, to:

Stephen A. Bogorad
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006

and to

Robert R. Harris, Esq.
Holland & Knight LLP
3 Bethesda Metro Center
Bethesda, Maryland 20814



Cathy G. Borten

From: Kevin Roman
To: Cathy Borten
Date: 01/02/2007 10:09:18 AM
Subject: Fwd: RE: Update

>>> "Sara McLaughlin" <sara@hre-rst.com> 07/06/2006 11:27 AM >>>
Mr. Davis in 88-201 is removing his clothes out as I type. He should be out in the next couple of hours. They are the only ones left everyone else has vacated.

Sara H. J. McLaughlin
Director Of Training and Transition
Hercules Real Estate Services, Inc.
372 Beechmont Drive
Newport News, Virginia 23608
Phone: 757-234-6096
Fax: 757-234-6079

-----Original Message-----

From: Scott Copeland [mailto:scott@rstdevelopment.com]
Sent: Thursday, July 06, 2006 10:08 AM
To: 'Fred Felton'; 'Steven Siegel'
Cc: 'Crystal Carr'; 'Kevin Roman'; 'Louise Kauffmann'; 'Sara McLaughlin'
Subject: RE: Update

It is my understanding that everyone has moved out...

Sara, please confirm by responding to all. Thanks.

M. Scott Copeland
RST Development, LLC
6001 Montrose Road, Suite 710
Rockville, Maryland 20852
(301) 816-4243
(301) 816-4272 (fax)
scott@rstdevelopment.com

-----Original Message-----

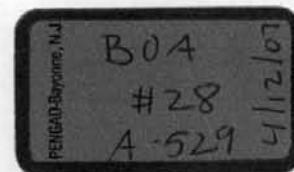
From: Fred Felton [mailto:FFelton@gaitthersburgmd.gov]
Sent: Thursday, July 06, 2006 9:55 AM
To: Scott Copeland; Steven Siegel
Cc: Crystal Carr; Kevin Roman; Louise Kauffmann
Subject: Update

Good Morning Gentlemen,

Could you give me an update on the status of how many people are still occupying West Deer Park. Please provide names and unit numbers.

Thanks,

Fred



Ordinance No. 0-2-65

AN ORDINANCE REPEALING AND REENACTING THE ZONING ORDINANCE OF THE TOWN OF GAITHERSBURG, MARYLAND, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 66B, TITLE 2, ANNOTATED CODE OF MARYLAND.

Whereas Article 66 B, Title 2, Annotated Code of Maryland, empowers the Town to enact a zoning ordinance and to provide for its administration and enforcement within its own corporate limits; and

Whereas the Mayor and Council deem it necessary, for the purpose of promoting the health, safety, morals, or general welfare of the Town to enact such an ordinance; and

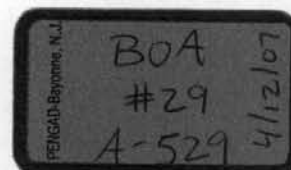
Whereas the Mayor and Council, pursuant to the provisions of Article 66B, Title 2, Annotated Code of Maryland, have appointed a Planning Commission to recommend the boundaries of the various original zones and appropriate regulations to be enforced therein; and

Whereas the Planning Commission has made a preliminary report and held a public hearing thereon, and submitted its final report to the Mayor and Council; and

Whereas the Mayor and Council have given due public notice of a hearing relating to zones, regulations, and restrictions, and have held such a public hearing; and

Whereas all requirements of Article 66B, Title 2, Annotated Code of Maryland, with regard to the preparation of the report of the Planning Commission and the subsequent action of the Mayor and Council have been met;

NOW THEREFORE BE IT ENACTED BY THE MAYOR AND TOWN COUNCIL OF GAITHERSBURG, MARYLAND:



for frontage requirements, and shall be computed on the basis of the building structure in its entirety, taking into consideration the number of lots upon which the structure is located, provided, however, that the minimum width of each dwelling unit within the structure shall be 18 feet.

Height Regulations

Buildings may be erected up to 35 feet in height except that:

The height limit for dwellings may be increased up to 45 feet and up to 3 stories provided there are side yards, each of which is 10 feet or more, plus 1 foot or more of side yard for each additional foot of building height over 35 feet.

A public or semipublic building such as a school, church, library or hospital may be erected to a height of 60 feet from grade provided that required front, side and rear yards shall be increased 1 foot for each foot in height over 35 feet.

Special Provisions for Corner Lots

Of the two sides of a corner lot, the front shall be deemed to be the shorter of the two sides fronting on side streets.

The side setback on the side facing the side street shall be 35 feet or more for both main and accessory buildings.

For subdivisions platted after the enactment of this ordinance, each corner lot shall have a minimum width at the front setback line of 100 feet or more.

E. R-20 Zone, Medium Density Residential

This zone is intended to stabilize and protect medium-density areas by reducing hazards to the living environment and to provide for a varied, denser urban residential pattern suitable to the needs of the population by encouraging a range of dwelling types.

a. The following uses are permitted by right:

1. all uses permitted in the R-T Zone;
2. two-family and multiple-family dwellings;
3. boarding houses and rooming houses;
4. fraternity and sorority houses;
5. accessory uses and structures, including but not limited to:
 - a. accessory uses and structures permitted in the R-90 zone;
 - b. business office for the administration of multi-family dwellings containing more than 24 dwelling units;
 - c. swimming pools for the exclusive use of the residents of the dwelling or dwellings located on the same parcel or lot;
 - d. on-site signs, restricted to one name plate not exceeding 2 square feet in area which indicates the name of the occupant of the premises, and 1 unlighted sign not exceed-

ing 6 square feet in area which indicates the prospective sale or rental of the property on which it is located.

- b. The following uses are permitted as special exceptions when approved by the Board of Appeals:
Public or private community swimming pools.

F. R-H Zone, Planned Residential

The purpose of this zone is to provide suitable sites for relatively high density residential development while retaining the open character of existing residential areas. Further, it is intended that this zone will provide the maximum possible freedom in the design of structures and their grouping, and will permit flexible and imaginative layout.

- a. The following uses are permitted by right after the Planning Commission approves a Site Development Plan for the lot or tract on which the uses will be located:
 - 1. all uses permitted in the R-T Zone;
 - 2. all uses permitted in the R-20 Zone, Medium Density Residential;
 - 3. accessory uses and structures permitted in the R-20 Zone, and on-site signs not exceeding 12 square feet in area, lighted, which identify the buildings or a permitted use but not an accessory use;
- b. The following uses are permitted when approved by the Planning Commission as part of the Site Development Plan, and when approved by the Board of Appeals as special exceptions:
 - 1. all uses permitted as special exceptions in the R-20 Zone;
 - 2. retail sales and consumer service establishments incidental to and located within a multifamily structure, limited to drug store, restaurant, newstand, barber and beauty shops, valet shops, and delicatessens, provided that:
 - a. the uses are primarily for service to and the convenience of residents of the structure or project in which they are located;
 - b. such establishments shall not be located above the ground level floor;
 - c. tenants of the building are protected from noise, traffic, odors, and interference with privacy.
- c. Procedure for approval:
 - 1. before any uses are permitted in this zone, an application for approval of a Site Development Plan shall be submitted to the Planning Commission. The application shall show in detail the plans for development of the lot or tract, including specifically:
 - a. the topography of the lot and surrounding area, showing the location of woodland, streams, and water areas, and other significant features of the land;

TABLE OF LOT, YARD, LOT COVERAGE, AND HEIGHT REQUIREMENTS ↓

Zone	Minimum Lot		width (in ft.)	Minimum Yards (in feet)			Maximum Lot Coverage (%)	Maximum Height	Minimum Green Area (%)	Minimum Distance Between Main Buildings
	Total	Area sq. ft. For more than one dwelling unit: per dwelling unit		Front	Rear	Side				
R-A	40,000		150	50	50	25	20		60	50 ft.
R-R	20,000		100	40	50	25	25	2½ stories or 35 ft.	60	50 ft.
R-90	9,000		75	30	30	10	30		50	20 ft.
R-20	9,000	1st 2 dwelling units 4,000 each; each additional dwelling unit 2,000	75 + 10 for each 4 dwelling units over 2	30*	30*	10*	40	3 stories or 45 ft.	50	50* ft.
R-H	5 acres		250	30*	30*	10*	12	unlimited	55	50* ft.
R-O	9,000		75	30	20		40	45 ft.	10	none
R-T↓						none, except yard adjoining residential zone shall be as provided in that zone				
C-P↓				30	20		40	45 ft.	none	none
C-1				none			none	110 ft.	none	none
C-2				none				unlimited		
C-2 A	5 acres		250	none			60	45 ft.	none	none
I-1	none		50	none, except yard adjoining residential zone shall be as provided in that zone, and yard adjoining a numbered State or Federal highway shall be 50 feet			75	110 ft.	none	none
I-2	none		100							
I-3	2 acres		100	50*	50*	50*	25	110 ft.	none	50*

↓ See Text for Respective Zones

* Shall Be Increased One Foot for Each Foot of Building Height Over 30 Feet.

such as to make it evident that emission was not reasonably preventable.

6. Odor: No emission of objectionable odors outside the lot lines shall be permitted, except during periods when breakdown of equipment occurs such as to make it evident that the emission was not reasonably preventable.
 7. Toxic gases: No emission of noxious, toxic or corrosive fumes or gases shall be permitted, except during periods when breakdown of equipment occurs such as to make it evident that the emission was not reasonably preventable.
- d. The Table of Lot, Yard, Lot Coverage and Height Requirements is hereby adopted by reference and declared to be a part of this ordinance.

Section 2. Supplementary Zone Regulations

A. Off-Street Parking and Loading

1. There shall be provided, at the time of the erection or enlargement of any main building or structure, minimum off-street parking space, either within or without a structure requiring a rectangular area 10 x 20 feet per space.
2. Interior driveways and entrance and exit driveways shall be at least 20 feet in width to allow safe and expeditious movement of vehicles, and entrance and exit driveways shall be separately provided wherever possible. Interior driveways for one way vehicular movement only may be reduced to not less than 12 feet.
 - a. Dwelling: one and two-family, 1 space per dwelling unit; three- or more family, 1½ spaces per dwelling unit; not more than 50% of the required yard set back area shall be used for such purpose.
 - b. Theater, auditorium or stadium: One automobile parking space for each 4 seats or similar vantage accommodations provided, plus 1 space for each 4 employees.
 - c. Hospitals, nursing homes, and similar medical institutions: 1 space for each 600 square feet of floor space, plus 1 space for each 3 employees.
 - d. Eleemosynary and philanthropic institution: 1 parking space for each 2 employees, plus 1 parking space for each 400 square feet of floor space for residents and visitors.
 - e. Educational institution: 1 parking space for each 2 employees, including teachers and administrators, plus sufficient off-street space for the safe and convenient loading and unloading of students, plus additional facilities for all student parking, and if a stadium or other spectator area is located on the site, such additional parking space as required for a theater, auditorium or stadium.
 - f. Hotels, rooming houses, apartment hotels, and motels: 1 parking space for each unit, and 1 parking space for each 3 employees.

ORDINANCE NO. 0-13-80

AN ORDINANCE TO ADD ARTICLE X TO CHAPTER 24 OF THE CITY CODE (THE ZONING ORDINANCE) TO REGULATE AND ESTABLISH STANDARDS FOR OFF-STREET PARKING AND LOADING AND ENFORCEMENT THEREOF AND TO REPEAL EXISTING SECTION 24-161 OF ARTICLE IV AS BEING INCONSISTENT THEREWITH. TEXT AMENDMENT T-190.

BE IT ORDAINED, by the Mayor and Council of Gaithersburg, in public meeting assembled, that a new Article X, entitled Off-Street Parking and Loading is hereby added to Chapter 24 of the City Code to read as follows:

ARTICLE XI

OFF-STREET PARKING AND LOADING

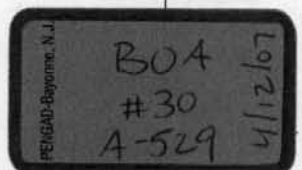
Sec. 24-214. General Requirements.

(a) There shall be provided, at the time of erection, enlargement or structural modification of any building or structure, off-street parking spaces, either within or without a structure with adequate provision for ingress and egress, in accordance with the requirements contained in this Article. Except as otherwise provided, each parking space shall consist of a rectangular area ten (10) feet by twenty (20) feet.

(b) For any building or part thereof used for commercial, industrial, hospital or institutional purposes, adequate off-street parking space for loading and unloading shall be provided in such amount and at such locations as required by the Planning Commission at the time of site development plan approval, considering the size and proposed use of the building. Such space shall be in addition to other requirements contained in Section 24-213.

(c) No required parking area or loading space shall be used or permitted to be used for the sale, repair, dismantling or servicing of any vehicle, equipment, materials or supplies.

(d) Parking space as required in this Article shall be on the same lot with the main building or structure, or for buildings other than dwellings, located not more than three hundred (300) feet therefrom. Any parking space shown on a site development plan heretofore or hereafter approved by the Planning Commission which abuts the side or rear lot line, or faces the front of a lot in a residential zone, shall be screened from such lot by an earth berm, planting, a fence, a solid wall or a combination of two or more of the foregoing as specified by the planning Commission in approval of the site development plan.



(e) Interior driveways and entrance and exit driveways shall be at least twenty (20) feet in width to allow safe and expeditious movement of vehicles, entrance and exit driveways shall be separately provided wherever possible. Interior driveways for one way vehicular movement only may be reduced to not less than fifteen (15) feet.

(f) Where the angle between the center line of a parking space and the center line of the driveway serving it does not exceed sixty (60) degrees, the width of such space, perpendicular to the center line of such space, shall not be required to exceed nine feet. Any such space shall be marked by double parallel lines on each side thereof. If any parking area consists of spaces ten (10) feet wide or wider shall hereafter be redesigned to provide parking spaces less than said ten feet wide pursuant to this paragraph, the new design shall be first approved by the Planning Commission.

(g) All required parking spaces, access and circulation drives shall have a paved surface in accordance with the requirements of this Article. All off-street parking, loading and storage areas must be striped in a visible color. The Planning Commission, in addition may require in its approval of the site development plans, directional arrows and traffic signs on site as necessary for site traffic control.

(h) The last two feet of any parking space need not be paved; provided that either:

(1) the last two (2) feet shall overhang a monolithic concrete curb and the first two feet of any adjacent sidewalk seven (7) feet or greater in width; or

(2) the last two (2) feet shall overhang a concrete curb and a two (2) foot grass strip; and

(3) that the use of such non paved portion of the parking space will not interfere with nor injure existing or required shrubbery, landscaped or treed areas.

(i) No off-street parking lot, area or facility shall be reduced in area or encroached upon by buildings, structures or vehicular storage or any other use where such reduction or encroachment will reduce the area below that required by this Article.

Sec. 24-215. Parking requirement schedule.

(a) Special computation requirements.

(1) When any land or building is used for two (2) or more purposes, the number of parking spaces required shall be the sum of the requirements for various individual uses, computed separately in accordance with this Article.

(2) For the purposes of this Article, the number of employees shall be the average number of persons employed taking into consideration day, night and seasonal variations.

(3) For the purposes of this Article, "gross leasable area" is defined as the total floor area of buildings designed for exclusive tenant occupancy and use, including basements, mezzanines and all other floors measured between interior lines of outside walls and center lines of interior partitions.

(4) Restaurants shall be classified in this schedule as follows:

(a-1) High turnover, midday sitdown restaurants where at least ninety percent (90%) of food served is consumed on the premises, including, but not limited to cafeteria and self-service restaurants.

(b-1) Low turnover, evening sitdown restaurants where patrons order from a menu and consume food at the same table, and are served by a waiter.

(c-1) Carry out, drive-in or fast food restaurants where food is served in non-reuseable containers at a counter or window.

(5) Whenever in this Code any particular zone contains requirements for parking areas, or there are other provisions which vary from the provisions of this Article, the more restrictive requirement shall apply.

(b) Parking Schedule.

Off-street parking space shall be provided as follows:

<u>RESIDENTIAL</u>	<u>PARKING SPACES REQUIRED</u>
Single Family, and Two Family	2/DU (Dwelling Units)
Multiple Family Apartments and Apartment Hotels*	
Efficiency	1/DU
1 B.R.	1.75/DU
2 B.R.	2/DU
3 B.R. and larger	2.5/DU
	*Plus one space for each 400 square feet of assembly area provided.
Hotels,* Motels,* Tourist Cabins, Rooming and Boarding Houses	1/guestroom or rooming unit *Plus one space for each 400 square feet of assembly area provided.
Housing for elderly and/or handicapped	1/2DU's
Dormitories	1/3 residents
Townhouses	2.25/DU
<u>EDUCATIONAL AND RELIGIOUS</u>	
Churches, Synagogues or other places of worship	1/4 seats provided

Convents, Monasteries and Nunneries	1/10 residents
Educational institutions, private	
Elementary and Junior level	1/employee
Senior high level*	1/employee plus 1/10 Students
Colleges and Universities*	1/3 residents plus 1/employee plus 1/4 non-residents *Plus 1/4 seats provided for stadiums, auditoriums and assembly halls.
Trade schools and vocational instruction	Determined by Planning Commission at site Plan review
<u>CULTURAL AND RECREATIONAL</u>	
Arcades and amusement centres (indoor)	1/200 square feet of floor area
Athletic fields and tennis courts	1/10 persons in capacity
Botanical and Zoological gardens*	Determined by Planning Commission at site Plan review
Bowling alleys	4/lane
Commercial stadiums, grandstands and race tracks	1/4 seats provided plus 1/2 employees
Golf courses	Determined by Planning Commission at site Plan review
Libraries, museums, art galleries, and historical sites	1/400 square feet of gross floor area
Meeting halls, convention and exhibition halls	1/100 square feet of gross floor area
Private clubs and lodges	1/300 square feet of gross floor area
Recreational and community centers	1/80 square feet of gross floor area
Skating rinks and dance halls	1/100 square feet of floor area
Swimming pools (excluding private pools)	
Commercial	1/40 square feet of water surface area
Community	1/70 square feet of water surface area
Theatres (Drive-In)	10 percent over vehicle capacity
Theatres (indoor)	1/4 seats plus 1/employee
<u>HEALTH, WELFARE AND PHILANTHROPIC</u>	
Animal hospitals and kennels	1/400 square feet of gross floor area
Convalescent, Rest, Nursing homes, Sanitarium, care for aged and disabled	1/4 beds plus 1/employee

Hospitals	1/patient bed plus 1/2 employees plus 1/physician
Medical and dental offices clinics	1/200 square feet of gross floor area plus 3/medical practitioner
Philanthropic and Charitable Institutions	1/employee plus 1/400 square feet of visitors' floor area
<u>TRANSPORTATION, COMMUNICATIONS AND UTILITIES</u>	
Air, rail, motor and water freight terminals	1/2 employees
Airports, heliports and helistops	Determined by Planning Commission at site plan review
Cartage and express facilities	1/employee plus 1/vehicle maintained on site
Rail and bus passenger terminals	1/100 square feet of waiting area
Sewage treatment plants	1/employee
Public utility and service uses	1/employee
<u>MANUFACTURING, STORAGE AND WHOLESALE</u>	
Building material sales	1/employee plus 1/300 square feet of sales area
Mail order house	1/employee
Printing and publishing	1/employee
Production or processing of materials, goods or products	1/employee plus 1/vehicle stored on the premises plus 1/300 square feet of sales area
Temporary buildings for construction purposes	1/occupant
Testing, repairing, cleaning, servicing of materials, goods or products	1/employee
Warehousing and wholesaling	1/employee plus one/vehicle stored on premises
<u>COMMERCIAL ESTABLISHMENTS, RETAIL SALES, SERVICE, TRADE OR MERCHANDISING</u>	
Automobile and other motor vehicle sales	1/employee plus 1/600 square feet of gross floor area
Automobile and other motor vehicle repair, laundry and service stations	2/bay plus 1/employee
Automobile, truck and trailers rental	1/rental vehicle or unit plus 1/employee
Banks and financial institutions	1/300 square feet of gross floor area
Commercial establishments devoted to retail sales, service, trade or merchandising (except restaurants)	1/180 square feet of gross leaseable area devoted to retail sales, service, trade or merchandising and located on any floor of a building which may be entered approximately at grade
	1/400 square feet of gross leaseable area devoted to retail sales, service, trade or merchandising and located on any floor other than that which may be entered approximately at grade.
Shopping Centers, Complexes or Malls containing more than 600,000 square feet of gross leaseable area	1/200 square feet of gross leaseable area devoted to retail sales, service, trade or merchandising and located on any floor of a building which may be entered approximately at grade
	1/400 square feet of gross leaseable area devoted to retail sales, service, trade or merchandising and located on any floor other than that which may be entered approximately at grade.

Commercial greenhouses and
nurseries

1/employee plus 1/300
square feet of gross floor
area plus 1/1000 square
feet of outdoor sales area

OFFICES

Offices, general, business and
professional (non-medical)

1/300 square feet of gross
floor area

Offices, medical and dental

4/practitioner occupying
offices plus 1/2 employees

ADDITIONAL USES

All uses not listed above shall be determined by Planning
Commission at site plan review or prior to issuance
of occupying permits.

Sec. 24-216. Construction, maintenance, screening, drainage,
lighting requirements.

Every area hereafter constructed and maintained for
off-street parking purposes shall comply with the following
requirements:

(a) The minimum grade of such parking areas,
including access and circulation areas shall be one and one-
half percent (1 1/2%). The maximum grade of any such parking
areas, including access and circulation areas shall be six
percent (6%); provided however, this shall not prohibit drive-
ways connecting one portion of a parking area to another from
having a grade not exceeding ten percent (10%).

(b) Each parking lot or other non-structural off-
street parking area shall be paved with two (2) inches of
asphaltic concrete over a four (4) inch asphaltic base.

(c) Every parking lot or other off-street parking
area shall be so designed, constructed and maintained that
surface water will neither accumulate, except in accordance
with an approved storm water management plan, nor damage or
impair abutting properties and public streets.

(d) Lighting of off-street parking lots, areas and
facilities shall be installed and maintained in a manner not
to reflect or cause glare into abutting or facing residential
premises, nor cause reflection or glare which adversely
affects safe vision of operators of motor vehicles on adjoining
streets and roads. Adequate lighting shall be provided if
the parking lot, area or facility is to be used at night.
Where such lighting now exists or is hereafter installed on
poles or other structures within or adjacent to parking areas,
said poles or structures shall be protected from damage by
motor vehicles by curbs, posts or other installations designed
to prevent such damage.

(e) Multiple-family, commercial or industrial
parking lots hereafter constructed containing three hundred
(300) or more parking spaces shall be divided into parking
areas of not more than one hundred (100) cars each and shall
be separated by landscaping, change of grades, structures
or other natural or artificial means. Not less than five
percent (5%) of the total parking lot or area shall be
devoted to such internal landscaping and interior parking
separation areas. This requirement shall be computed as
part of any green area development requirement.

(f) The edges or perimeters of existing or hereafter installed parking areas having impervious surfaces shall be protected with curbs or wheel stops or some other installation so as to prevent vehicles from being driven over the edge or perimeter of the impervious surface.

(g) Every parking lot, area or facility shall be maintained in such a manner so as to prevent injury to persons or damage to property and further shall be maintained so as to prevent the accumulation of litter and debris.

(h) Multiple-family, commercial or industrial parking lots, areas or facilities existing or hereafter installed containing fifty (50) or more parking spaces shall contain thereon one (1) waste or trash receptacle for public use for each fifty (50) parking spaces.

Sec. 24-21⁷. Parking for Handicapped.

All parking lots, areas or facilities hereafter constructed or enlarged shall provide parking for handicapped persons in accord with the requirements imposed in this section.

All parking lots, areas or facilities hereafter constructed or enlarged shall have a number of parking spaces, not to exceed five percent (5%) in grade, reserved for the physically handicapped, as set forth in the following table. Such spaces shall be identified by signs eight (8) feet above grade, stating "Handicapped Parking". Where such signs are placed flush against buildings or structures, or in other locations not accessible to vehicular or pedestrian traffic, a six (6) foot height may be permitted. Each reserved parking space shall be not less than twelve (12) feet wide. Where a curb exists between a parking lot surface and a sidewalk surface, an inclined curb approach or a curb cut with a gradient, where feasible, of not more than one (1) foot in twelve (12) and a width of not less than four (4) feet shall be provided for wheelchair access.

Total Parking Spaces in Lot	Required Minimum Number of Accessible Spaces
LESS THAN 9	0
10 - 25	1
26 - 100	2
101 - 300	4
301 - 500	6
501 - 800	8
801 - 1000	10
MORE THAN 1,000	TEN SPACES PLUS TWO SPACES FOR EACH ADDITIONAL THOUSAND, WITH A MAXIMUM LIMIT OF 20 SPACES.

Parking spaces for the physically handicapped shall be identified as specified in this section and located as close as possible to elevators, ramps, walkways and entrances. Parking spaces shall be located so as to provide handicapped persons with easy accessibility to a store, shopping center or other applicable building. Sidewalks shall be scored or otherwise textured to indicate to blind persons the location of doors. Storm drainage grates and similar devices shall not be located within the required means of access for the physically handicapped.

Sec. 24-218. Enforcement.

In the event of any failure to comply with the provisions of this Article:

(a) The Planning Commission shall deny approval of any submitted site development plan and no building permits shall be issued for any non-conforming development plan; or

(b) The Board of Appeals may revoke any special exception or variance where compliance with this Article is a condition of their approval; or

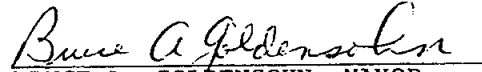
(c) The City Manager may order the closing of any parking lot, area or facility or part thereof and such order shall be enforceable by appropriate legal or equitable proceedings in a court of competent jurisdiction.

Notwithstanding anything to the contrary contained in this Article, the regulations set forth in Sections 24-212, 24-214 and 24-215 of this Article shall not apply with respect to single family and two family dwelling units.

AND BE IT FURTHER ORDAINED as follows:

Sec. 24-161 is hereby repealed in its entirety.

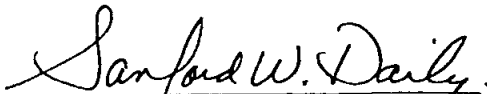
ADOPTED by the City Council this 17th day of March, 1980.


BRUCE A. GOLDENSOHN, MAYOR
AND PRESIDENT OF THE COUNCIL

Delivered to the Mayor of the City of Gaithersburg, Maryland this 17th day of March, 1980. Approved by the Mayor of the City of Gaithersburg, this 17th day of March, 1980.

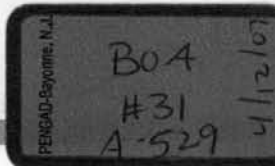

BRUCE A. GOLDENSOHN, MAYOR

This is to certify that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the 17th day of March, 1980, and the same was Approved by the Mayor on the 17th day of March, 1980. This Ordinance will become effective on April 7, 1980.


Sanford W. Daily, City Manager

Sec. 24-219. Parking requirement schedule.**(a) Special computation requirements.**

- (1) When any land or building is used for two (2) or more purposes, and section 24-219(c) of this article is not applied, the number of parking spaces required shall be the sum of the requirements for various individual uses, computed separately in accordance with this article.
- (2) For the purpose of this article, the number of employees shall be the average number of persons employed taking into consideration day, night and seasonal variations.
- (3) Restaurants located within or as part of a retail center and which in the aggregate contain less than fifteen (15) percent of the gross leasable floor area of said center shall be considered retail uses and the parking requirement calculated on the basis of retail use. In all other cases, the computation of parking ratio requirements for restaurants that fall between any classification not listed below shall be determined at the discretion of the planning commission. Restaurants shall be classified in this section as follows:
 - a. **Class A:** High-turnover, midday. Sit-down restaurants where at least ninety (90) percent of the services are provided on the premises and all customer services to the patron are performed by a waiter or waitress at a table. There shall be at the time of occupancy of any such restaurant a minimum of thirteen (13) parking spaces for each one thousand (1,000) square feet of gross floor area within the establishment.
 - b. **Class B:** Carry-out, drive-in or fastfood restaurants where food is served in nonreusable containers at any counter or window. There shall be at the time of occupancy of such restaurant a minimum of sixteen (16) parking spaces for each one thousand (1,000) square feet of gross floor area within the establishment. Provided, however, food sales establishments containing less than one thousand (1,000) square feet of gross floor area within a shopping center or mall wherein not more than a single variety of prepared food is sold which does not require cooking or heating shall be deemed a commercial retail establishment and the parking requirements therefor shall apply.
 - c. **Class C:** Cafeteria-style restaurants where prepared foods are self-served and consumed on the premises at a table. There shall be at the time of occupancy of any such restaurant a minimum of sixteen (16) parking spaces for each one thousand (1,000) square feet of gross floor area within the establishment.
- (4) Whenever in this Code any particular zone contains requirements for parking areas, or there are other provisions which vary from the provisions of this article, the more restrictive requirement shall apply.



(b) *Parking schedule.* Off-street parking space shall be provided as follows:

Residential

Parking Spaces Required

Single-family and two-family
Multiple-family apartments and apartment
hotels:*

2/DU (Dwelling Units)

Efficiency

1/DU

1 B.R.

1.7/DU

2 B.R.

2/DU

3 B.R. and larger

2.5/DU

*Plus one space for each 400 square feet of
assembly area provided.

Hotels*, motels*, tourist cabins, rooming and
boarding houses

1/guest room or rooming unit

Plus one space for each 400 square feet of
assembly area provided.

Housing for elderly and/or handicapped

1/2DU

Dormitories

1 per 3 residents

Townhouses

2.5/DU provided however that each garage
space within townhouse developments shall
be counted as one-half of a parking space.

Urban Cottage

Unit Size

Dwelling Unit Count:

0 to 699 square feet

1.0/DU

700 to 899 square feet

1.75/DU

900 to 1200 square feet

2.0/DU

Bed and breakfast

1/guest room in addition to single-family res-
idential requirement.

Educational and Religious

Parking Spaces Required

Child or elderly day care facilities accommo-
dating more than eight (8) individuals

1½/employee

Churches, synagogues or other places of wor-
ship

1 per 4 seats provided

Convents, monasteries and nunneries

1 per 10 residents

Educational institutions, private

Elementary and junior level

1/employee

Senior high level*

1/employee plus 1 per 10 students

Colleges and universities*

1 per 3 residents plus 1 per 3 employee plus 1
per 4 nonresidents

*Plus 1 per 4 seats provided for stadiums,
auditoriums and assembly halls.

Educational and Religious

Trade schools and vocational instruction

Cultural and Recreational

Arcades and amusement centers (indoor)

Athletic fields and tennis courts

Botanical and zoological gardens

Bowling alleys

Commercial recreation restaurants

Commercial stadiums, grandstands and race tracks

Golf courses

Libraries, museums, art galleries, and historical sites

Meeting halls, convention and exhibition halls

Private clubs and lodges

Recreational and community centers

Skating rinks and dance halls

Swimming pools (excluding private pools)

Commercial

Community

Theatres (drive-in)

Theatres (indoor)

Health, Welfare and Philanthropic

Animal hospitals and kennels

Convalescent, rest, nursing homes, sanitarium, care for aged and disabled

Hospitals

Medical and dental offices clinics

Philanthropic and charitable institutions

Parking Spaces Required

Determined by planning commission at site plan review

Parking Spaces Required

1 per 100 square feet of floor area

1 per 10 persons in capacity

Determined by planning commission at site plan review

4/lane

1 per 100 square feet of gross floor area devoted to amusement and recreation machines and devices; and 16 per 1000 square feet of gross floor area devoted to restaurant use

1 per 4 seats provided plus 1 per 2 employees

Determined by planning commission at site plan review

1/400 square feet of gross floor area

1/100 square feet of gross floor area

1/300 square feet of gross floor area

1/80 square feet of gross floor area

1/100 square feet of floor area

1/40 square feet of water surface area

1/70 square feet of water surface area

10 percent over vehicle capacity

1/4 seats plus 1/employee

Parking Spaces Required

1/400 square feet of gross floor area

1/4 beds plus 1/employee

1/patient bed plus 1/2 employees plus 1/physician

1/200 square feet of gross floor area plus 3/medical practitioner

1/employee plus 1/400 square feet of visitors' floor area

Transportation, Communications and Utilities

**Air, rail, motor and water freight terminals
Airports, heliports and helistops**

**Cartage and express facilities
Rail and bus passenger terminals
Sewage treatment plants
Public utility and service uses**

Manufacturing, Storage and Wholesale

Building material sales

**Mail order house
Printing and publishing
Production or processing of materials, goods or products
Temporary buildings for construction purposes
Testing, repairing, cleaning, servicing of materials, goods and products
Warehousing and wholesaling**

Commercial Establishments, Retail Sales, Service, Trade or Merchandising

Automobile and other motor vehicle sales

**Automobile and other motor vehicle repair, laundry and service stations
Automobile, truck and trailer rental
Banks and financial institutions
Commercial establishments devoted to retail sales, service, trade or merchandising (except restaurants)**

Parking Spaces Required

**1/2 employees
Determined by planning commission at site plan review
1/employee plus 1/vehicle maintained on site
1/100 square feet of waiting area
1/employee
1/employee**

Parking Spaces Required

**1/employee plus 1/300 square feet of sales area
1/employee
1/employee
1/employee plus 1/vehicle stored on the premises plus 1/300 square feet of sales area
1/occupant
1/employee
1/employee plus 1/vehicle stored on premises or 1/500 square feet of gross floor area plus 1/vehicle stored, whichever shall be greater.**

Parking Spaces Required

**1/employee plus 1/600 square feet of gross floor area
2/bay plus 1/employee
1/rental vehicle or unit plus 1/employee
1 per 300 square feet of gross floor area
1 per 180 square feet of gross leasable area devoted to retail sales, service, trade or merchandising and located on any floor of a building which may be entered approximately at grade, 1 per 400 square feet of gross leasable area devoted to retail sales, service, trade or merchandising and located on any floor other than that which may be entered approximately at grade.**

Commercial Establishments, Retail Sales, Service, Trade or Merchandising

Retail centers

Parking Spaces Required

2.5 spaces per 1000 square feet of gross leasable area devoted to retail sales, service, trade or merchandising located on any floor other than that which may be entered approximately at grade.

4.5 spaces per 1000 square feet of gross leasable area in centers containing not more than 250,000 square feet of floor area devoted to retail sales, service, trade or merchandising.

5 spaces per 1000 square feet of gross leasable area in centers with more than 250,000 but not exceeding 400,000 square feet of floor area and centers with more than 1 million square feet of floor area devoted to retail sales, service, trade or merchandising.

5.5 spaces per 1000 square feet of gross leasable area in centers containing more than 400,000 but not exceeding 1 million square feet of floor area devoted to retail sales, service, trade or merchandising.

1/employee plus 1 per 300 square feet of gross floor area, plus 1 per 1000 square feet of outdoor sales area

Commercial greenhouses and nurseries

Offices

Offices, general, business and professional (nonmedical)

Offices, medical and dental

Parking Spaces Required

1 per 300 square feet of gross floor area

4/practitioner occupying offices plus 1 per 2 employees.

Provided, however, an office for mental health practitioners including, but not limited to, psychologists, psychiatrists and therapists, containing less than 2,000 square feet of gross floor area and having no more than 2 full-time practitioners, shall be deemed general office use and the parking requirements therefor shall apply.

Additional Uses***Parking Spaces Required***

All uses not listed above shall be determined by planning commission at site plan review or prior to issuance of occupying permits.

(c) *Shared parking for developments containing a mix of uses.*

- (1) When any land and/or buildings are contiguous to one another, and are used for two (2) or more purposes, the number of parking spaces shall be computed by multiplying the minimum appropriate percentage, as shown in the following parking credit schedule for each of the five (5) time periods shown. The number of parking spaces required for the mixed use development is then determined by adding the results in each column. The column total that generates the highest number of parking spaces becomes the parking requirement.

<i>Use</i>	<i>Weekday</i>		<i>Weekend</i>		<i>Night</i>
	<i>Day</i>	<i>Evening</i>	<i>Day</i>	<i>Evening</i>	<i>Time</i>
	<i>6 a.m.-6 p.m.</i>	<i>6 p.m.-Midnight</i>	<i>6 a.m.-6 p.m.</i>	<i>6 p.m.-Midnight</i>	<i>Mid-night-6 a.m.</i>
Industrial/office/warehouse	100%	10%	10%	5%	5%
General retail	60%	90%	100%	70%	5%
Hotel/motel	75%	100%	75%	100%	75%
Class A restaurant	50%	100%	100%	100%	10%
Class B restaurant	100%	100%	100%	100%	10%
Class C restaurant	50%	100%	100%	100%	10%
Commercial recreation establishment and theatres	40%	100%	80%	100%	10%
All other	100%	100%	100%	100%	100%

- (2) The following conditions shall apply to any parking facility for a development containing a mix of uses:
- The mixed use property and shared parking facility must be owned by the same developer/owner or must be the subject of a recorded shared parking agreement made between different owners of the properties involved. Any changes to the agreement must be approved by the planning commission. There can be no greater than five hundred (500) linear feet, measured along the most appropriate walking route between the shared parking facility and the entrance to the establishments being served. Shared parking facilities located on a separate lot from the establishments being served must meet the requirements of section 24-218(d) of this article.
 - Parking for the handicapped may not be shared or included in any shared parking calculation.
 - The city planning commission shall determine at the time of site plan approval that shared parking is possible and appropriate at the location proposed.

Particular attention is needed to assure that sufficient and convenient short-term parking will be available to commercial establishments during the weekday daytime period. The shared parking spaces must be located in the most convenient and visible area of the parking facility nearest the establishment being served.

- d. All subsequent requests for use and occupancy for an approved shared parking development must be reviewed by the planning department in order to determine if there is a substantial change in use which would require the new use to be approved by the planning commission after finding that sufficient parking will be available for the new use.

- e. A parking facility, for the purposes of this article, is defined as a surface parking lot or group of lots, a parking structure or garage.

(Ord. No. O-13-80; Ord. No. O-10-81, § 9, Ord. No. O-15-81; Ord. No. O-17-82, § 3; Ord. No. O-14-83, § 2, 7-18-83; Ord. No. O-9-85, § 2, 8-5-85; Ord. No. O-20-87, 9-8-87; Ord. No. O-12-89, 9-5-89; Ord. No. O-5-93, 4-12-93; Ord. No. O-6-93, 4-19-93; Ord. No. O-17-93, 11-15-93)

Sec. 24-220. Construction, maintenance, screening, drainage and lighting requirements.

Every area hereafter constructed and maintained for off-street parking purposes shall comply with the following requirements:

- (a) The minimum grade of such parking areas, including access and circulation areas, shall be one and one-half (1½) percent. The maximum grade of any such parking areas, including access and circulation areas, shall be six (6) percent; provided, that this shall not prohibit driveways connecting one portion of a parking area to another from having a grade not exceeding ten (10) percent.
- (b) Every parking lot or other nonstructural off-street parking area shall be paved in accordance with one of the following standards, as deemed appropriate by the city manager or his designee:
 - (1) Two (2) inches of bituminous concrete surface course over a four-inch bituminous concrete base course of an approved subgrade; or
 - (2) One and one-half (1½) inches of bituminous concrete surface course over three (3) inches of bituminous concrete base course over six (6) inches of crushed stone graded aggregate base course on an approved subgrade; or
 - (3) Other materials or construction methods which are demonstrated to the satisfaction of the city manager or his designee to be the equivalent of the standards referred to in (1) and (2) of this subsection.
 - (4) The standards set forth above shall be applied in the following manner:
 - a. The thickness of bituminous concrete or crushed stone courses stated in the standards shall be the minimum thickness acceptable.

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Education

University of Maryland School of Law (J.D. 1966)

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Administration (B.S. 1962)

Bar Membership

Maryland (1966)

District of Columbia (1967)

Professional Experience

Partner - Abrams & West, P.C. (1984 - Present), Bethesda Maryland

City Attorney, City of Gaithersburg, Maryland (1979 -2004)

Special Counsel, City of Gaithersburg, MD (2004 - present)

Town Counsel, Town of Laytonsville, MD (2003 - present)

Partner - Levitan, Ezrin, West & Kerxton, Chtd. (1979 - 1984)

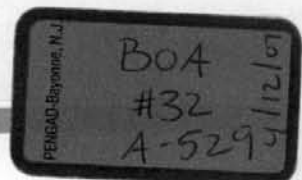
¹Chief Zoning Hearing Examiner for Montgomery County, Maryland (1971 -
1979)

²Senior Assistant County Attorney - Montgomery County, Maryland (1967 - 1971)

Practice Areas

¹As Zoning Hearing Examiner - presided over rezoning requests involving White Flint Mall, First Planned Development Zone in County, and approximately 300-400 other rezoning applications.

²As Senior Assistant County Attorney, authored and worked for adoption of Montgomery County Fair Housing Law, Montgomery County Consumer Protection Law. Comprehensive revisions to County Human Relations Commission. Montgomery County Public Defenders Ordinance (which is the model for the current Maryland Public Defender System) and Various Zoning Provisions incorporated into Montgomery County Zoning Ordinance.



³Zoning and Land Use Law - Administrative and Appellate Practice before land
use regulatory agencies and State Courts in Maryland
Municipal Law
Administrative Law
Real Property Law

Memberships

- Bethesda-Chevy Chase Chamber of Commerce (Past President, 1983 and
Counsel to Chamber, 1996-1997)
- Maryland State Bar Association
- Maryland Bar Foundation
- Montgomery County Bar Association
- Urban Land Institute

Related Professional Activities

Author - 1st, 2nd, 3rd, and 4th Editions of Guide to Maryland Zoning Decisions,
Lexis-Nexis Law Publishers
How to Win The Zoning Game, Michie Co.
Numerous Articles in legal and land planning publications

³In private practice of law in Bethesda Maryland since 1979. Representative list of clients over
the years:

Bell Atlantic Mobile Systems (Now Verizon Wireless)
Blockbuster Childrens Amusement Corporation
Boston Properties
Carroll County, MD
City of Gaithersburg, MD
Crowell & Baker Construction Co.
Crown Castle Atlantic, Co.
Dry Clean Depot, Inc.
Duron, Inc.
GFS Realty (Giant Food)
IDI of Maryland, Inc.
Public Storage Co.
Washington/Maryland/Delaware Service Station Association
Willco Construction Group
Winchester Homes, Inc.
7 Eleven Corp.

Co-Author

Handling The Land Use Case, Little Brown and Co. 1984

Land Use Practice and Forms, Clark, Boardman & Co., 1997

Handling the Land Use Case, 2nd Edition, Clark, Boardman & Co. of West Publishing, 2005.

Faculty

- Land Use Institute, American Law Institute of the American Bar Association, (1984 - Present)
- Land Use Institute, Maryland Institute for Continuing Professional Education of Lawyers

Guest Lecturer

- American University School of Law
- University of Baltimore School of Laws
- Catholic University School of Planning
- Maryland Municipal League
- Alabama Bar Association
- Montana Environmental Quality Council
- American Planning Association

Consultant to Government and Private Businesses in Land Use matters

Professional Recognition:

Best Lawyers in America (2007 Ed.) - Land Use & Zoning Law
Washingtonian Magazine (Dec. 2004) - Top Lawyers in Washington (Real Estate)
Who's Who in American Law
Who's Who in America
Expert in Land Use Law and Procedure; Circuit Court for Montgomery County,
Maryland, Maryland Tax Court

Other Relevant Experience:

Stanley D. Abrams

Created Mixed Use Development Zone for Nationally Acclaimed Communities of Kentlands in Gaithersburg, Md

Created Zoning and Land Use Regulations for central business district, corridor development and historic districts.

Participated in the development of Comprehensive Community Master Plans and Plans Amendments.